

**Globalizing Utilitarianism:
Distributive Justice beyond the State**

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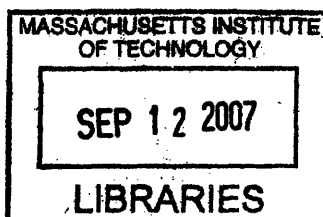
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by

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ABSTRACT

This dissertation develops and defends a utilitarian approach to global distributive justice: that part of political ethics that is concerned with the distribution of benefits and burdens across the members of distinct societies. Surprisingly little has been written by utilitarians, or by welfare consequentialists in general, on this topic. Many philosophers believe that utilitarianism is incapable of arriving at morally acceptable conclusions concerning global distributive justice, to the extent that it does not merit serious consideration in philosophical debates in the area. The central thesis of the dissertation is that that view is mistaken, and that utilitarianism in fact provides an attractive and useful way of conceiving of our global distributive duties.

The main argument begins by distinguishing three types of goal at which principles of distributive justice might be directed. One such goal is the attainment by individuals of a minimally decent level of welfare, a second the treatment of individuals in accordance with norms of fairness, a third the obtaining of a certain degree of equality across individuals, for reasons independent of the first two goals. I then consider whether or not there is a utilitarian case for each of these goals at the global level. I argue that, while the utilitarian case for global equality *per se* is currently weak, a concern at the global level both for what I call “decency” and for distributive fairness can and should be incorporated into the framework of utilitarianism.

I present an account of precisely what form these goals ought to take at the global level, how they intersect with concerns about domestic distributive justice and collective self-determination, and how they translate into duties on the part of individual states and international institutions. I also draw out the implications of the resulting principles and duties for some specific aspects of global political economy and international law (including trade in goods, services and ideas; development; and immigration). The result is a distinctive conception of the ground, scope and content of global distributive justice that I hope will appeal, at least in part, to utilitarians and non-utilitarians alike.

Dissertation Supervisor: Sally Haslanger
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Contents

Introduction	9
1. Utilitarianism and Distributive Justice	
1.1. Introduction	25
1.2. What we talk about when we talk about distributive justice	25
1.3. Domestic distributive justice: Outline of a utilitarian approach	31
1.4. Conclusion	44
2. Global Distributive Justice: How to Begin	
2.1. Introduction	46
2.2. From domestic distributive justice to global distributive justice	46
2.3. Starting with the state	50
2.4. Upshots	56
3. The Competition	
3.1. Introduction	58
3.2. The associative conception	58
3.3. Utilitarianism vs. the competition	63
3.4. Problems with the competition	67
3.5. The upcoming terrain	73
4. Decency	

4.1. Introduction	74
4.2. The utilitarian case for decency	74
2.3. Two goals	76
4.4. The empirical question: Can outsiders help?	81
4.5. The normative question: Should outsiders help?	85
4.6. Conclusion	100
 5. Fairness and Equality	
5.1. Beyond decency	102
5.2. Fairness and distributive justice	103
5. 3. Why fairness matters	106
5.4. Is global politics “fairness-apt”?	111
5.5. Fairness in global politics	115
5.6. Global Equality?	128
5.7. Conclusion	133
 6. The Combined Approach	
6.1. Introduction	135
6.2. Pluralism and the priority problem	135
6.3. Application: Decency, Fairness and Immigration	143
 Conclusion	158
 References	165

Introduction

When we hear that nearly a fifth of the world's population lives on less than \$2 a day, or that 64% of Indian women cannot read, or that the most recent leg of the Doha round has once again failed to broker a pro-poor deal on agricultural trade, or that the gap between the world's richest and the world's poorest is, on some measures, higher today than it ever has been, most of us feel that there is something morally amiss with the world. In particular, we feel that there is something morally amiss with the way in which the good and bad things that that world contains are distributed amongst those who live in it.

Over the past couple of decades there has been a surge of interest on the part of moral and political philosophers in explaining what precisely it is that is wrong with the current global distribution of advantages, and what it is that we are morally obliged to do about the situation. Theorists working from a wide range of different perspectives - political liberals, liberal nationalists, capability theorists, luck egalitarians, Kantians, Marxists, communitarians, libertarians - have attempted to show how their by now fairly well worked out accounts of domestic distributive justice should (or should not) be extended to the global sphere. The broad routes of approach are now well established, and debates concerning how particular positions are to be further developed and defended have become increasingly sophisticated and well populated. However, throughout all this activity, one attractive moral-political theory with a venerable history has yet to be well represented. The aim of this dissertation is to fill that gap.

The view in question is utilitarianism, which (for the moment) can be roughly defined as the position that all moral duties derive from a single fundamental requirement: to maximize the sum of wellbeing of all of the world's people, taken together. Utilitarianism can usefully be understood as comprising three basic, logically independent components (Sen and Williams 1982, 3-4): *welfarism*, the thesis that ethics is, ultimately, exclusively concerned with wellbeing, *consequentialism*, the thesis that the moral status of actions, rules, institutions and other entities is determined exclusively by their tendency to produce good states of affairs, and *sum-ranking*, the thesis that the value of a state of affairs is determined additively, by summing up the value of its components. Utilitarianism is thus a specific version of the broader family of welfare consequentialist accounts of morality, distinguished by its commitment to sum-ranking.

Not only utilitarianism, but welfare consequentialist theories in general, currently have a very weak presence in the philosophical literature on global distributive justice. This no doubt has much to do with the fact that such approaches are currently not well represented in moral and political philosophy generally. It may also be due to the fact that questions of justice are not seen as welfare consequentialism's strong suit and that as a result its proponents are wont to focus their efforts elsewhere. What little welfare consequentialist material there

is on matters of global distribution, while good as far as it goes, is ultimately unsatisfying. This is so for one or more of the following reasons, depending on the case: i) it focuses on questions of individual rather than collective conduct (Singer 1972, Mulgan 2002, Murphy 2003); ii) it is incomplete, developing the case for a minimal set of duties concerning the protection of basic interests, and leaving questions of more extensive duties unaddressed (e.g. Sen 1992, Goodin 1985, Elfstrom 1990); iii) it concerns mainly specific, applied problems, rather than (also) more foundational issues (Singer 2002); iv) it is chiefly critical rather than constructive (Arneson 2005); v) it is based on an unattractive version of welfare consequentialism¹; or, vi) it is simply too short to provide the depth of discussion required.²

One reason, then, why the project of developing an attractive utilitarian approach to global justice is worthwhile is that no one has done it, to a satisfactory degree, as of yet. It is often of interest to work out the implications of a theory in an area where it has not yet been thoroughly or adequately applied, especially a theory of such historical influence and lasting appeal as utilitarianism. My interest in the question is not exclusively of this disinterested nature, however. I am a utilitarian, and I think that the relative lack of material on global distributive justice by others of like mind is regrettable for two further, symmetric reasons: utilitarianism ought to be good for research on global distributive justice, and research on global distributive justice ought to be good for utilitarianism.

As far as the first of these is concerned, I hope to show in the following that a utilitarian approach to global distributive justice allows us to narrow in on the pressing issues, clear away some irrelevant but distracting considerations, and make a compelling case for a set of precise and plausible goals, principles and duties in this area. As for the second, there are two chief reasons why research on global distributive justice can be expected to contribute to the broader project of defending utilitarianism. The first is defensive in nature. There exist some apparently tempting views concerning what it is that utilitarianism implies regarding global distributive justice that cast doubt on the acceptability of utilitarianism more generally. Thus, to take one example, if we think that utilitarianism implies that we ought to institute a world government charged

¹ This is the case with the literature in neoclassical welfare economics and, in my view, Sen (1992, *inter alia*). Welfare economics is hampered by its restriction to the limited normative criterion of pareto efficiency, which both leaves too many alternatives unranked and is problematically conservative where redistribution is concerned, due to its rejection of the possibility of interpersonal welfare comparisons. Attempts to get around the latter problem by the Kaldor-Hicks move of measuring benefit in terms of willingness to pay result in the preferences of the rich being given more weight than those of the poor, and those aspects of well-being that are not well captured in monetary terms being neglected (see Hausman 2005 for an extended discussion). Much of Sen's work has been dedicated to pointing out these and other flaws in mainstream welfare economics, and his approach does not share them. His alternative is, however, problematic for other reasons, some of which I canvass in Chapter 1.

² Bailey, for instance, devotes just over one page to global distributive justice in the conclusion of an 161-page book entitled "*Utilitarianism, institutions and justice*" (1997).

with redistributing the resources of the developed world to the developing world, to the point at which the citizens of the latter are as well off as the citizens of the former, and if we think that this result is counter-intuitive, we will be less likely to accept utilitarianism. Utilitarians need to develop explicit positions on global distributive justice, if only to head off misinterpretations of this sort. If utilitarianism is to get a fair hearing in the literature, some claims about what it actually recommends in the global context must be advanced and defended.

A second way in which research on global distributive justice can be expected to contribute to a more general defense of utilitarianism is more positive in nature. It is arguable that utilitarians are selling themselves short by not emphasizing the global implications of their theory. This is because utilitarianism may have advantages over other theories in the global setting that it does not have in the personal or domestic settings. The problems that arise in the global case are so large that they almost certainly require a collective or institutional rather than an individual or personal solution; for citizens of the developed world, the global context also raises the problem of poverty in a particularly pressing way, given that systematic and radical poverty is heavily concentrated outside that world. In both of these areas, utilitarians are arguably on home ground. As several theorists have claimed, utilitarianism is at its most plausible when applied to collective rather than individual action³; it is also especially well equipped to accommodate the urgency of reducing human suffering and extreme deprivation. A well-developed utilitarian account of global distributive justice might, then, provide an example of an area where the general approach is particularly attractive. A second advantage that utilitarianism possesses over other moral and political theories in the global arena is that it has the resources to answer some questions pertaining to that domain which seem significant, but which do not even arise for some competing theories. As I will argue in Chapter 2, one such question concerns the moral justification for the existence of the state.

I trust that utilitarians will agree, on the basis of the above considerations, that the project of developing a utilitarian account of global distributive justice is an interesting and worthwhile one. But my hope is that the chapters to follow will also be useful even for those who reject utilitarianism. I see two grounds for optimism on this front. The first is the fact that one's own philosophical position is generally improved for having a robust opponent. Too often, however, hypothetical utilitarian approaches to global distributive justice are presented in the literature in a highly unpersuasive form. The general quality of the discussion would be improved on all sides if this were remedied. The second reason is that, despite some fundamental disagreements, utilitarians share some important concerns and commitments with their opponents. All plausible moral theories are to some degree concerned with the consequences of actions and institutions for

³ See, among others, Goodin 1995: "The strength of utilitarianism, the problem to which it is a truly compelling solution, is as a guide to public rather than private conduct. There, virtually all its vices – all the things that make us wince in recommending it as a code of personal morality – loom instead as considerable virtues" (8).

human welfare. While utilitarianism takes this concern about as far as it could possibly go, non-utilitarians are able to come along at least part of the way. Moreover, the potential for fruitful borrowing goes both ways. There is some very good material in non-utilitarian writing on global distributive justice, on which I will be drawing throughout. These facts together hold out the prospect that at least some of the conclusions that I draw below will be of the kind that non-utilitarians can likewise take on board.

The dissertation is structured as follows. Chapter 1 (*Utilitarianism and Distributive Justice*) addresses the question of how the concept of distributive justice ought to be understood from a utilitarian perspective. (What role do principles of distributive justice play within a utilitarian theory? What distinguishes duties of distributive justice from other moral requirements?) It then applies the results of that discussion to the case of domestic distributive justice, both for purposes of illustration, and in order to lay some foundations for later chapters. Chapter 2 (*Global Distributive Justice: How to Begin*) moves on to questions of global distribution in particular, setting up some basic elements of a utilitarian approach to the area, including an account of the stance that utilitarians ought to take toward the modern state system. Chapter 3 (*The Competition*) then provides a brief discussion of some of the more prominent non-utilitarian approaches to global distributive justice present in the literature. Its first aim is to situate the basic utilitarian approach to distributive justice outlined in the previous chapters within the broader theoretical landscape, thereby rendering the distinctive features of that approach more apparent. Its second aim is to highlight some of the problems that are faced by other approaches, thereby helping to motivate the search for an alternative.

Chapters 4 to 6 contain the heart of the dissertation. The organizing assumption on which they are based is the following. Principles of distributive justice – understood, generically, as those moral principles that govern the distribution of benefits and burdens across individuals – can usefully be divided into three categories, by reference to the goal or object at which they are directed. One such goal is the attainment by individuals of a minimally decent level of welfare. A second goal is the treatment of individuals in accordance with norms of fairness. A third goal is the obtaining of a certain degree of equality across individuals along certain dimensions, for reasons independent of the first two goals. Chapters 4 (*Decency*) and 5 (*Fairness and Equality*) address each of these three goals in turn in relation to the special case of global distributive justice, considering whether or not there is a utilitarian case for them at the global level, and, if so, the form that the principles or duties arising from them should take. To anticipate: I will argue that the goals of decency and fair treatment both have strong utilitarian warrant at the global level (the claim regarding the latter taking more arguing than that regarding the first), but that an analogous case for global equality, at least insofar as it is separable from the first two concerns, is currently hard to make. Chapter 6 (*The Combined Approach*) discusses the question of how the principles and goals advocated in the preceding chapters are to be concurrently pursued, and applies the complete account to the

relatively under-theorized area of justice in immigration. The latter application provides a way both of testing the force of my account in a specific policy area, and of generating some substantive conclusions concerning a network of policies and institutions that have a highly consequential impact on global wellbeing.

It is not part of my project here to provide a full defense of utilitarianism in general, i.e. as a comprehensive account of morality *tout court*. Before moving on to the following chapters, however, I do need to say something more both about what utilitarianism involves, and about why it ought to be considered a worthwhile object of philosophical attention. The remainder of this introduction will be dedicated to those tasks.

The core thesis of utilitarianism, in its classical form, can be expressed as follows:

An act (or policy, institution, motive, decision-procedure...) is morally right if and only if the total amount of wellbeing for all minus the total amount of ill-being for all that is produced by that act (etc.) over the long run is equal to or greater than this net amount for any other available act (etc.).

This claim, while superficially simple, incorporates commitments to a large number of extremely controversial theses about ethics. Since I cannot discuss all of these here, I will instead focus on the three central features mentioned earlier (welfarism, consequentialism and sum-ranking), going into some more detail on what they involve, and the key reasons why I find each, and the combined view, appealing.

1. *Welfarism*

Welfarism is the thesis that ethics is, ultimately speaking, exclusively concerned with wellbeing.⁴ It is opposed then, to the thesis that ethics incorporates a foundational role (also or instead) for values such as beauty, autonomy or understanding, the realization of human excellence or virtue, the obtaining of certain types of relation between persons, or respect for rights, insofar as each of these is separable from wellbeing. The welfarist thesis has two main attractions. The first is the intuitive appeal of its basic idea: *viz.*, that when something is morally good, it is ultimately because that thing makes lives go better, and go better *for* those who live the lives in question. This idea is so basic that is hard to give a positive argument for it: one either feels its appeal, or one does not. I feel it pretty strongly.⁵ The second key attraction is welfarism's ability to provide an

⁴ On one very broad, classical, understanding of the domain of ethics, it includes all of the normative standards that apply to conduct: including those springing from prudential, perfectionist and aesthetic modes of value. The most plausible interpretation of welfarism, however, has it as going for the modern, narrower understanding of the domain of ethics, as pertaining, roughly, to those standards that apply to our treatment of other beings.

⁵ Likewise Sumner:

The idea that the unifying – and justifying – function of all of our ethical categories is ultimately to make our lives go better, or to make the world a better place, is one that I

intuitively compelling account of what underlies moral status. The concept of wellbeing is usually applied exclusively to living things of a certain degree of neurological complexity (paradigmatically humans and other animals, not plants).⁶ But ethics, too, is generally considered to concern, exclusively, the way in which living things of this sophisticated kind ought to act or be treated. We do not consider my treatment of, say, a garden gnome an ethical concern, unless we can connect that treatment to the concerns of a reasonably sophisticated living being in some way. A neat way to connect these two thoughts is to claim that the subject-matter of ethics is ultimately wellbeing.

Almost all moral theories give wellbeing some role in ethics, and it is hard to imagine one being remotely plausible if it did not. The parts of welfarism more likely to raise objections are its claims that a) wellbeing is *foundational* to ethics, rather than of only derivative ethical value, and that b) it is the *only* value to have such status. There are three routes that a welfarist can take in response to an opponent's claim that a good other than, or instead of, wellbeing (such as autonomy, beauty or human perfection) has intrinsic moral value. One is to argue that the excluded good in question is morally valuable, but only instrumentally so, by virtue of the contribution that it makes to wellbeing. A second route is to argue that the excluded good is not morally valuable, even in this instrumental way. Either it has no value at all, or, more appealingly, it has value of a non-moral kind, such as aesthetic or perfectionist worth.⁷ A third route of response involves appealing to both of the preceding moves at once, by claiming that a given excluded good is not only a standard contributor to wellbeing, but that it also displays aesthetic and/or perfectionist value.⁸ Welfarists believe that the above moves together render welfarism capable of accommodating most of our central intuitions about value.

Any welfarist conception of morality will incorporate an account of wellbeing: a theory of what it is for a life to go well for the person (or other living being) whose

find utterly compelling. If that is not the point of the whole business of moral thinking, then I find it difficult to imagine what the point might be. What else could morality be *for*? And if it is not *for* anything – if it has no point – what claim can it have on our allegiance? (Sumner 2000, 1)

⁶ We can say that certain things make a plant's life go better for it (being watered, not being trampled on, etc.) But I think that most people would consider it odd or merely metaphorical to say that the lack of those things reduced the plant's wellbeing.

⁷ Something has perfectionist value when it is "a good instance or specimen of its kind, or ...exemplifies the excellences characteristic of its particular nature" (Sumner 1996, 23). Something has aesthetic value, on the other hand, when it is appealing, attractive or admirable in some way. Another option that might be mentioned here is *aretaic* value: that which characterizes the actions of the virtuous agent, as captured in such classical notions as nobility, integrity, fortitude, humility, courage etc. I do not mention this above since it seems to me to be not a fully distinct mode of value, but rather some sort of amalgam of moral and aesthetic value.

⁸ This last story seems the right one to tell, in many instances, concerning physical and intellectual achievement. Athletic feats or scientific theories are often praised for all of the following: a) their elegance or beauty, b) their embodiment of the standards of their fields, and c) their contribution to human welfare (either that of the achiever or of others).

life it is. Utilitarians have traditionally opted for either a) a desire-satisfaction account, according to which what it is that makes one's life go well is the satisfaction of (some subset of) one's desires, preferences, wants, or wishes, or b) some variant of hedonism, according to which a person's wellbeing is exclusively a function of the pleasure or enjoyment that she attains.⁹ But, as a formal matter, it is open to them to go for one of a range of other options, including a so-called "objective list" account, according to which a person's wellbeing is determined, in some more or less direct manner, by her relationship to one or more "objective" goods other than pleasure or desire-satisfaction alone.¹⁰

The philosophical literature on wellbeing is long in the tooth and characterized by pervasive disagreement. There are two main reasons why it is very difficult to decisively resolve the debate between the foregoing and other accounts. The first is that no existing account seems able to fit all of our pre-theoretical ideas about the nature of wellbeing. Deciding on one account over the others is, at base, a matter of working out which of those ideas one most wants to hang on to, and which of them one is more willing to discard. People inevitably resolve this issue differently, and there therefore comes a point at which efficacy of argument runs out. Another problem for the conclusive resolution of this question is the difficulty of constructing, for purposes of evaluating the merits of the various accounts, test cases a) on the details of which we can trust ourselves to get a firm and clear grip, and b) on which distinct accounts give distinct verdicts.

If this situation is frustrating for an ethicist, however, it is less so for a political theorist, for the following reason. Whatever they say about the fundamental nature of wellbeing, when it comes to settling on a list of the standard *contributors* to it, proponents of the main candidate accounts mentioned above tend to converge on very similar items. The standard list is something like the following:

pleasure or enjoyment; physical and mental health; social interaction (especially, close personal relations); autonomous action; certain sorts of understanding; various forms of accomplishment; some minimal degree of desire satisfaction; and the pursuit and achievement of personally endorsed goals.

The possibility of this consensus arises from the fact that most, if not all, of the goods standardly listed by objective list theorists are, as a purely empirical

⁹ Hedonistic accounts come in two main types, depending on the story they tell about what it is that makes a mental state pleasant. On the *sensation* model, adopted by Bentham, a mental state's being pleasant is purely a matter of its positive feeling tone, an intrinsic, unanalysable, homogenous quality that is present to varying degrees in all pleasurable experiences. On the *attitude* model, advocated by Sidgwick, what makes a mental state pleasant is not a phenomenal property of that state, but rather the reaction that the subject of the mental state has towards it: a mental state is pleasant just in case it is liked or enjoyed (see Sumner 1996, 91).

¹⁰ The term "objective" does not carry any great meta-ethical weight. It simply refers to the fact that accounts of the kind under consideration involve "a substantive judgment about what things make life better, a judgment which may conflict with that of the person whose wellbeing is in question" (Scanlon 1993, 188).

matter, recognizable both as common objects of human desire, and as reliable producers of human pleasure or enjoyment. I think that this broad consensus suggests that we can largely set aside, for purposes of political theory, the question of which goods directly contribute to wellbeing, and which do so only indirectly. Given that, as a matter of fact, a person aiming to promote the good(s) championed by one account will generally end up doing a good job of promoting the good(s) championed by the other, the deeper philosophical issue ends up being of little practical import.

Whatever their view about the fundamental nature of wellbeing, then, I suggest that welfarists should opt for an objective list account of wellbeing when considering broadly political questions. When I speak of wellbeing in what follows, then, I will be assuming such an account; in particular, one that highlights the constituents mentioned above.¹¹

2. Consequentialism

There exists some controversy in the literature over which claims a theory must endorse if it is to count as consequentialist. I consider acceptance of the following thesis to be both necessary and sufficient for a diagnosis:

Consequentialism. What an agent ought to do (or, which institution ought to be instantiated, which motive or character-trait ought to be inculcated, which decision procedure or rule ought to be followed, etc.)¹² is solely a function of an ordering of the available options in terms of the overall goodness in which each results.¹³

Along with the above thesis, there is also a cluster of additional commitments that are closely associated with the consequentialist tradition, but are arguably not essential to it, all of which are endorsed by classical utilitarians. Among the more central are the following¹⁴:

¹¹ Lest this move come across as an objective list theorist privileging her own view, I should out myself as, currently, a sort of reconstructed hedonist.

¹² For ease of exposition, in the remainder of this introduction I treat acts as the sole evaluand.

¹³ *Consequentialism* implies, among other things, *Commensurability*: the thesis that different options or states of affairs can be ordered in terms of a common measure of value. In the case of a welfarist theory, commensurability implies the possibility of interpersonal comparisons of wellbeing. There is a huge literature on this question. The approach that Harsanyi adopts in the following passage seems to me to be sensible: "A willingness to make interpersonal comparisons is no more than an admission that other people are just as real as we are, that they share a common humanity with us, and that they have the same basic capacity for satisfaction and dissatisfaction, in spite of the undeniable individual differences that exist between us in specific detail." (1982, 52). I will be assuming in what follows that interpersonal welfare comparisons are possible, at least at a coarse grain, and will be working with an intuitive understanding of how to go about making them.

¹⁴ Sinnott-Armstrong's helpful discussion (2006) lists a series of others.

Universalism. The consequences for all people (or all sentient beings¹⁵) are to be taken into account when determining the moral rightness of an act.

Equal consideration. All who count are to count equally. At the fundamental level, benefits or harms to one matter exactly as much as similar benefits or harms to another.

Agent-neutrality. The value of the outcome of a given act is to be assessed from an impersonal point of view, not from the perspective of the agent.

We can call *Classical Consequentialism* the conjunction of these three theses with *Consequentialism*.

Classical consequentialism has three key sources of appeal. The first can be introduced as follows. Any moral theory will, somewhere, incorporate an account of value: an account of those properties that make things good or bad. It will then, somewhere, incorporate an account of how we ought to respond to the values that the theory identifies. As Pettit has emphasized, a consequentialist account is distinguished, in regard to the second of these components, by its claim that the appropriate way to respond to a value is to *promote* it (2002, 97). Non-consequentialists, on the other hand, will claim that, in at least some cases, the proper way to respond to a value is to *honor* it (where this involves, standardly, refraining from damaging any particular instance of it, or protecting it from the potentially damaging actions of others). Often, of course, honoring a value will be a way of promoting it, but in some cases the two will diverge, as in the textbook case where the consequentialist endorses the killing of one to save the lives of five. In a case of genuine divergence (and many consequentialists will deny that the foregoing example is one such) the consequentialist will forgo the honoring in favor of the promoting, whereas the non-consequentialist will not. One source of classical consequentialism's appeal is arguably the line that it takes on this issue. If promoting a value is not the only way to respond to it, some argue, it certainly seems like the most rational way.¹⁶ To identify some thing, *x*, as (intrinsically) good or valuable is arguably to be committed to the idea that it is good that *x* obtain. But if this is so, how can it be rational to claim that a state of affairs *A* which is identical in every other respect to a state of affairs *B*, except that *A* contains less of *x* than *B*, is better? Surely if we think that *x* is intrinsically

¹⁵ Although, on my view (see fn 11) there is no moral justification for excluding (some) non-human animals from the discussion, for simplicity I join other theorists of global distributive justice in focusing exclusively on humans from now on.

¹⁶ Scheffler identifies something like this feature as the source of the 'spellbinding force' of consequentialism (the phrase is Foot's):

[Consequentialism] appears to embody a notion of rationality which we recognize from myriad diverse contexts, and whose power we have good independent reason to respect.... what we may call *maximizing* rationality. The core of this conception of rationality is the idea that if one accepts the desirability of a certain goal being achieved, and if one has a choice between two options, one of which is certain to accomplish the goal better than the other, then it is, *ceteris paribus*, rational to choose the former over the latter. (1994, 142-3)

good we ought to think it morally preferable to produce *A* over *B*, if doing so is within our power.

This argument can, however, be challenged. The non-consequentialist can claim that, while promotion is the appropriate response to value in some cases, it is not always so. Different values – or the same values in different contexts – call for different responses. One way to support this thought is to appeal to the domains of aesthetic or perfectionist value. It is not at all obvious that the best way to respond to beauty is to make more of it, rather than to contemplate or appreciate it. Similarly, while perhaps we ought not to gratuitously slice off a spider's leg, it's not clear that the essential nature of spiders gives us any reason to *promote* spider octopodia. But this suggests that to identify something as valuable is not, *ipso facto*, to identify it as the appropriate object of promotion.¹⁷

It is at this point that a second source of the appeal of classical consequentialism might become apparent. Pettit argues that, while we *can* conceive of both promoting and honoring as appropriate ways to respond to value in ethics, it is simpler to appeal to only one of these modes, especially if that one is able to make sense of most of the ways that we think it appropriate to act (2002, 104). Classical consequentialism's simplicity, in this and other respects, arguably provides an important part of its appeal. The theory is based on a few key axioms, which can be applied to a huge variety of evaluands, and promise determinate answers to all moral problems (however difficult it may be to determine those answers in practice). In these respects classical consequentialism contrasts with many non-consequentialist theories, which tend to incorporate a variety of independent fundamental principles dedicated to particular problems, and can leave one wondering how, in cases of conflict between their various demands, a final verdict is, even in principle, to be reached. Simplicity is not, however, always regarded as a virtue in an ethical theory. While it perhaps ought to be considered a tiebreaker between theories, when all else is equal, beyond that it is not clear what advantage it provides.¹⁸ Pettit seems to think that all is not equal in the case at hand. Arguably his underlying concern in making the above point is not the idea that non-consequentialism is too complex *per se*, but rather that its complexity is ungrounded. Pettit complains that non-consequentialists offer no deep justification for switching between honoring and promoting in different cases: their moves from one mode to another are effected in an arbitrary way (2002, 104). This seems to me to be a fair complaint.¹⁹

¹⁷ See Scheffler, who follows up the thought in the previous footnote with the caution: "But it is, after all, not obvious that maximizing rationality constitutes the whole of rationality" – we need to take account of the "more comprehensive tapestry of full human rationality." (1994, 150)

¹⁸ Bernard Williams is well known for pressing this point. See *e.g.*: "[T]he fact that utilitarianism starts out with so little luggage provides no presumption *at all* in its favor. The question can only be whether it has enough luggage for the journey it must make." (1985, 106, italics in original)

¹⁹ It should be noted that a similar complaint can also be raised against those consequentialists who take a non-promoting approach to aesthetic or perfectionist value. The complaint in this case is less pressing however, for two reasons. The first is that the case in question is one of distinct responses to distinct domains of value, a move which might be viewed as less arbitrary than the positing of distinct responses within a single domain of value. The second is that some

A third source of the appeal of classical consequentialism is arguably the attractive account that such a theory provides of the key moral values of equality and impartiality, as spelled out in the theses of *universalism*, *equal consideration*, and *agent-neutrality* given earlier. Thus Mulgan lists as one of the strong virtues of consequentialism the idea that “on the face of it, [it] treats all agents perfectly equally and is thus perfectly impartial” (2002, 14). I share the view that the consequentialist treatment of these values is a natural and attractive one. However, it is clear that others disagree. Classical consequentialism is certainly *an* interpretation of equality and impartiality, but it is hard to argue that it is the only plausible one.²⁰

I think that the above three features - consistency with a familiar and central type of rationality, relative simplicity, and incorporation of a natural interpretation of equality and impartiality - do point to some genuine virtues in classical consequentialism. Nonetheless, since the case that they present is hardly airtight, they are properly conceived of, not as clinching the deal in favor of classical consequentialism, but rather as suggesting that it is at least worthy of exploration.

3. *Sum-ranking*

As a formal matter, any consequentialist theory must have three basic components. First, it must provide an account of some set of ultimate goods (e.g., for utilitarians, the single good of wellbeing). Second, it must select an *interpersonal aggregation function*: a way of combining different instances of the basic good (or goods) that it selects into a single global value, thereby allowing overall states of affairs to be ranked from best to worst. Third, it must

consequentialists, at least, will deny that aesthetic and perfectionist value constitute genuine, independent domains of value in any case. If this is so, then beauty or species-exemplification will not, in themselves, generate reasons for action, and will not therefore be regarded as an example of a value that calls for types of action other than promotion.

²⁰ See, for example, Rawls’ contrasting view on impartiality:

An impartial judgment, we can say, is one rendered in accordance with the principles which would be chosen in the original position. An impartial person is one whose situation and character enable him to judge in accordance with these principles without bias or prejudice. Instead of defining impartiality from the standpoint of a sympathetic observer, we define impartiality from the standpoint of the litigants themselves...The fault of the utilitarian doctrine is that it mistakes impersonality for impartiality (1971, 165-6).

Rawls is similarly critical of the utilitarian interpretation of equality. On his view, one of the reasons that utilitarians are unable to provide an attractive account of what it is to treat persons equally is that at the morally fundamental level, their theory seems to leave no room for persons at all, as opposed to mere containers for wellbeing (see 1971, 24).

[N.B. Although the page numbers that I will reference when citing *A Theory of Justice* are those in the 1999 Revised Edition, I will refer to the text throughout by its original publication date (1971), in order to clearly distinguish it from Rawls’ *The Law of Peoples* (1999).]

provide an account of how the resulting ranking of states of affairs is to guide our actions – an account of what it is that are we to do with the global value that we have defined.

The classical consequentialist answer to the third question listed just now is that we ought to *maximize* the global value in question: we are to produce the highest-ranked state of affairs that we are in a position to produce. Although objections have been raised against this claim (see e.g. Slote 1985), it is widely endorsed by contemporary consequentialists, and I will be assuming here that utilitarians are committed to it. The much more controversial question among consequentialists is the second listed above, i.e. that of which interpersonal aggregation function we are to select.

Some of the more prominent options in the contemporary philosophical literature, for the purposes of a welfarist theory, are the following:

1. *Arithmetic addition* (“simple aggregation”, “sum-ranking”). The best outcome is that in which the total amount of wellbeing, summed across all persons, is the greatest.
2. *Egalitarianism*. One outcome is intrinsically better than another, in at least one respect, when the distribution of wellbeing across persons in the former is more equal than it is in the latter. *Extreme* (or monistic) egalitarians claim that this principle is the sole fundamental criterion for the moral evaluation of states of affairs. *Moderate* (or pluralist) egalitarians claim that it is one such criterion, but that it ought to be combined with, or traded off against, another principle or principles, such as arithmetic addition.
3. *Prioritarianism*. The best outcome is that which appropriately balances two factors, one “aggregative” and one “distributive”. Roughly, i) more total wellbeing is better than less total wellbeing, and ii) more wellbeing for those who have less of it is better than more wellbeing for those who have more of it.²¹
4. *Sufficientarianism*. The best outcome is that in which the greatest number of people attain a “sufficient” level of wellbeing, as specified by some absolute threshold. Like egalitarianism, this option comes in both an extreme (or monistic) and a moderate (or pluralist) variant.

Classical utilitarians select the first of these four options: they rank outcomes by the single criterion of the sum of wellbeing that those outcomes contain.

²¹ Prioritarianism is best understood as a family of moral principles, which differ chiefly over the questions of 1) how to specify the worst-off class, 2) how much extra weight to accord to the wellbeing of that class, and 3) whether or not the priority given to the worst-off class tapers off (perhaps to the vanishing point) as wellbeing levels increase.

In adjudicating between the various possible interpersonal aggregation functions, we face similar difficulties to those we face when selecting a theory of wellbeing. The first is that each function appears to have quite serious problems. Where the above options are concerned, sum-rankers appear to endorse i) violations of basic rights and ii) extremely unequal distributions of resources in some (actual or hypothetical) situations. Egalitarians i) appear to approve (in at least one respect) “leveling down”: a move from one state of affairs to another in which the population under consideration is held constant, and everyone in it is worse off, and ii) to endorse the foregoing move for a reason in tension with welfarism.²² Simple sufficientarians i) struggle to set their relevant welfare threshold in a non-arbitrary way, ii) give us no way to rank states of affairs in which all parties enjoy wellbeing levels above (or all suffer wellbeing levels below) that threshold, and iii) in some situations of resource scarcity, require an allocation of resources that is intuitively wasteful or inefficient.²³ Prioritarians i) have trouble explaining how we are to non-arbitrarily set the weight that is to be given to the worst-off²⁴, ii) in according greater significance to a welfare increase to some over an identical welfare increase to others, arguably violate the thesis of *Equal Consideration* that I earlier suggested to be one of the key attractions of classical consequentialism, iii) like egalitarians, are committed to the existence of a form of “impersonal” value that looks in tension with welfarism²⁵, and iv) share the apparently worrying implications of sum-ranking in regard to some cases. Hybrid versions of one or more of the above functions have the unenviable feature of combining several of these faults at once, whilst also looking unappealing *ad hoc*.

The second difficulty in choosing between these and other available functions (of which there are many)²⁶ is that, as in the case of competing accounts of the nature of wellbeing, it is hard to construct test cases a) on the details of which we can trust ourselves to get a firm and clear grip, and b) on which distinct functions

²² The more equal state of affairs in a case of leveling down is not better *for* anyone. Preferring it therefore seems to conflict with the basic welfarist idea, expressed by Sumner as follows: “ethics has ultimately to do with ensuring that lives go well, or at least that they not go badly...If something will improve the conditions of no one’s life, make no one better off, then what ethical reason could be given for recommending it?” (Sumner 1996, 191-2)

²³ In situations of scarcity we are often faced with hard choices between small wellbeing gains for some, and larger wellbeing gains for others. Simple sufficientarians will never let the larger gains take priority, when letting the smaller take priority instead will result in more persons attaining their magic line. But in some such cases it seems that it is the larger gains that ought to prevail.

²⁴ Should, for example, an increase in the wellbeing of the worst off count ten times as much as an identical increase in the wellbeing of the best off (and maybe five times as much as an identical increase in the wellbeing of the comfortably off?) Or should the relevant numbers be 6 and 3? 1.5 and 1.1?

²⁵ Holtug, in making this point, notes that, unlike egalitarians, prioritarians are at least “not committed to the existence of intrinsic values that contain *only* impersonal elements...the better outcome *necessarily* includes improvements in individual welfare” (2006, 28, italics his). My view - which Holtug seems to share - is that this fact does not dispel the concern.

²⁶ Another pair of prominent options hold, respectively, that the best outcome is that in which the mean level of wellbeing is the greatest, or that which maximizes the product of individual utilities (the Bernoulli-Nash social welfare function).

give distinct verdicts. To illustrate a), consider the usual sort of putative counterexample to simple aggregation, based on its supposedly objectionable distributive consequences. Such counterexamples generally present us with two states of affairs, *P* and *Q*, one of which, we are told – *P*, say – contains a greater sum total of wellbeing than the other. But then we are told that *P* is distributively unattractive in some way: it involves, say, 80 badly off people, and 20 extremely well off people, whereas *Q* involves 100 comfortably off people. The person making the objection then tells us that, intuitively, *Q* is preferable to *P*, even though arithmetic addition ranks *P* higher. Note that, in order for a supposed counterexample such as this to show sum-ranking to be counter-intuitive, we have to be convinced both i) that the aggregation has been done properly, i.e. that *P* really does contain a greater sum of wellbeing than *Q*, and ii) that the implied result of sum-ranking – the claim that we ought to prefer *P* to *Q* – is implausible. But, in the case of many supposed counter-examples, there will arguably be doubts about one or other of i) or ii). Some of the reasons why we may fail to be convinced of i) are the following:

- 1) In some cases, the stipulated welfare attributions will be simply implausible. To take another common sort of example, being tortured and losing one's life is so bad that, whatever the objector claims, it just seems unbelievable that the satisfaction that 20 sadists would get out of inflicting it would actually outweigh that badness.
- 2) In other cases, where the stipulated welfare attributions are not *prima facie* implausible, we will nonetheless find it difficult to vividly imagine what it is like to experience the levels of welfare described, causing us to underestimate just how valuable (or disvaluable) attainment of those levels may be. (Worse, we may find it difficult to even conceive of the *difference* between the distinct welfare levels stipulated in some of these examples, if, as psychologists have suggested, we find it difficult to categorize a single dimension into more than seven or so distinct levels.)
- 3) Our judgments may be affected by vaguely felt concerns about distant effects, such as those on unmentioned parties, or those delayed in time. Even if we are told that such factors are to be understood as accounted for, lingering doubts may nonetheless affect our response to the states of affairs that we are asked to compare.

Where i) is in doubt, our preference for a state of affairs in which the sum of wellbeing is stipulated as lower may in fact indicate a preference for a state of affairs that, on our own (inarticulate) calculations comes out as the higher of the two. Where i) is not reasonably in doubt, on the other hand, ii) may be unobvious: that is, it may no longer be clear that, say, benefiting the well-off few rather than the worse-off many really is the wrong course of action.

Given the above difficulties, there is room for reasonable disagreement on the question of which interpersonal aggregation function a welfare consequentialist ought to choose. My basic reason for preferring sum-ranking is the following. Any remotely plausible version of (welfare consequentialist) egalitarianism or

sufficientarianism will have to be a moderate version. Like prioritarianism, it will have to incorporate some purely aggregative element. But this means that *prima facie* counter-intuitive aggregation results are bound to arise at some point, whichever option we select. As consequentialists (and, for that matter, arguably not only as consequentialists) we are stuck with those results. And if we cannot avoid them, it seems unwise to add extra problematic elements to our view in the fruitless attempt to escape them. These other problematic elements, present, as noted earlier, in each of egalitarianism, prioritarianism and sufficientarianism, undermine the commitments to a) welfarism, b) impartiality c) completeness and/or d) simplicity that make up much of the appeal of the classical welfare consequentialist program. This is a lot to lose for a dubious ability to avoid *some prima facie* horrors sometimes.

This is hardly a decisive argument in favor of sum-ranking, not only because the merits and demerits of each of the options mentioned above merit a much more thorough discussion, but also because there are many other possible aggregation functions not mentioned here that may be more promising. I am not, however, too worried about not having at hand the decisive argument in question, at least for the purposes of this dissertation. This is because I suspect, although I cannot argue for the claim here, that the precise nature of the interpersonal aggregation function that a welfare consequentialist selects (at least, out of the range of sensible options) will not have very far-reaching implications for the conception of global distributive justice with which he or she ends up. The conclusions that I reach in the following chapters seem to me likely to be broadly acceptable to prioritarians, moderate egalitarians and moderate sufficientarians as well as utilitarians, and to proponents of other candidate functions besides. If this claim does not seem especially plausible now, the reasons for making it should become clearer as the chapters proceed.

In the preceding introduction to utilitarianism, I have been mainly focusing on the theory's virtues. It is also, however, notoriously open to an extensive array of serious objections. Although I will touch on and respond to some of these objections in the ensuing chapters and the conclusion, as I noted at the outset it is not my aim here to defend utilitarianism as a general account of morality. Nor, for that matter, is it my aim to defend it as the one way forward where theorizing about global distributive justice, in particular, is concerned. That latter aim would require both the above-mentioned general defense of utilitarianism, and a comprehensive weighing up of its merits as an approach to global distributive justice against all available alternatives, neither of which I plan to do.

My ambitions are more limited, although still, I think, ambitious, especially given the current philosophical climate where utilitarianism is concerned. Although I am of the view that utilitarianism gives the best available account of our considered moral judgments regarding global distributive justice, I here adopt the more modest goal of showing that it at least provides one plausible account of those judgments. The overall thesis that I wish to advance in the dissertation as a whole is the claim that utilitarianism deserves to be taken seriously as an

approach to global distributive justice. Even if the majority view continues to be that we ought to ultimately reject it, it ought not to be dismissed in the cavalier way in which it currently is in the literature. As I hope to show in what follows, it has too much going for it for it not to deserve a more cordial hearing than that.

Chapter 1. Utilitarianism and distributive justice

1.1 Introduction

Anyone out to construct a theory of distributive justice is faced with two basic tasks. The first task is that of formulating a consistent and compelling set of principles concerning what it is that distributive justice demands. The second, more foundational, task, on which the broad shape of proposals concerning the first depends, is that of providing an analysis of the idea of distributive justice itself: of what it is that makes a theory or principle one of distributive justice, rather than of something else. These two tasks are presented in Rawls' *A Theory of Justice* in terms of a distinction between a "conception" and a "concept" of justice (1971, 5). A concept of justice specifies the role that justice is to play within a moral theory; a conception of justice provides a substantive account of the principles that fill out that role.

This chapter approaches both of these tasks from a utilitarian perspective. The first part addresses the "concept question", by means of a brief discussion of the nature and role of principles of distributive justice within a utilitarian theory. The second part addresses one special and important case of the "conception question", by providing an outline of a utilitarian account of domestic distributive justice. This case will be used both to illustrate the points made in the earlier part of the chapter, and to lay some foundations for later chapters.

1.2 What we talk about when we talk about distributive justice

What does the concept of distributive justice involve? Utilitarian theorists of distributive justice who are out to answer this question without putting themselves out of a job are faced with the following problem. Certain central elements of the common-sense concept of distributive justice appear to be in tension with some of the core features of utilitarianism. Those elements are the following:

Distributive focus. Distributive justice is commonly understood to be concerned with the distribution of goods or bads amongst the members of a group, rather than with the amount of goods or bads that that group enjoys. It concerns, to employ a familiar metaphor, the way in which the pie is cut rather than how large the pie is. Utilitarianism, however, is distribution-insensitive: it is fundamentally concerned with the amount of good that is produced by a given action (rule, institution, motive, etc.), rather than the way in which the good in question is distributed amongst the individuals affected.

Emphasis on individuals. The point of distributive justice, in ordinary moral thought, is to ensure that individuals are accorded what is due to them. Its focus is on the claims of individual persons, rather than on "the claims of general interest" (Raphael 2001, 207). In contrast, the ultimate concern for the overall

good that characterizes utilitarianism translates into a lack of interest, at the morally fundamental level, in the qualities and claims of specific individuals. The utilitarian can only make sense of the idea of what is due to each individual by reference to the relationship of that individual to the overall good.

Focus on Desert. In everyday moral thought, distributive justice is connected in some intimate way to the desert of individuals.²⁷ Judgments of desert are concerned with fitting types of treatment to the specific qualities and actions of individuals, in particular to those for which individuals can appropriately be praised or blamed. While judgments of desert refer exclusively to the past or present qualities or actions of individuals, however, utilitarian judgments, by virtue of their consequentialist nature, are “forward-looking”: they evaluate all objects exclusively by reference to their future effects.

Pluralism. The common-sense notion of distributive justice is pluralistic in nature, containing not only desert, but also needs and rights, as apparently mutually irreducible criteria of distribution. For utilitarians, by contrast, all moral concerns ultimately reduce to a single master principle: the maximization of aggregate wellbeing.

Taken together, the above considerations have suggested to some that the accommodation of distributive justice within the framework of utilitarianism presents a serious and fundamental problem. This problem is acknowledged by utilitarians themselves. Mill remarks that “In all ages of speculation, one of the strongest obstacles to the reception of the doctrine that Utility or Happiness is the criterion of right and wrong, has been drawn from the idea of justice”, and calls it “the only real difficulty in the utilitarian theory of morals” (1863). Hastings Rashdall writes in a similar vein that “it is a matter of life and death to our position” to find a common denominator for justice and benevolence (1907, 264-6).

1.2.1 Indirect utilitarianism: a solution, and some problems

The way out of this apparent difficulty is to be found in the thesis known as *indirect consequentialism*: the claim that agents should (at least normally) decide how to act by reference to rules that are justified by the consequences of their general acceptance.²⁸ This thesis derives from the idea that, due to such factors

²⁷ Thus Mill writes:

[I]t is universally considered just that each person should obtain that (whether good or evil) which he deserves; and unjust that he should obtain a good, or be made to undergo an evil, which he does not deserve. This is, perhaps, the clearest and most emphatic form in which the idea of justice is conceived by the general mind. (1863)

²⁸ A focus on the general acceptance of a rule rather than on general compliance with that rule is necessary in order to accommodate consequences of the former that are broader than the latter (e.g. the effects of accepting a rule on individuals’ self-respect, sense of security, or the quality of interpersonal relations). “General” acceptance should be understood as acceptance by the

as our cognitive limitations²⁹, our proneness to self-deception, and our need to co-ordinate our actions with those of others, applying the principle of utility directly whenever faced with a choice of actions is unlikely to be the best decision procedure, even judged on strictly utilitarian grounds. Instead, what seems most likely to further the utilitarian goal is application of a set of more specific, subsidiary principles concerning which procedure or policy to follow in a particular set of circumstances, or in response to a particular decision problem. For this reason, utilitarians posit what are known as “secondary principles”, selected and justified on the basis of the “primary principle” of utility. As Sumner suggests, this equates to supplementing the utilitarian “theory of justification” with a “theory of decision-making” (179), where the best decision-making strategy (the best secondary principle for a given decision problem) is “the most successful, the standard of success being given by [the] theory of justification” (181).

It is worth emphasizing that the distinction between *direct* and *indirect* consequentialism pointed to here differs from the familiar distinction between *act* and *rule* consequentialism. The latter concerns the consequentialist’s theory of justification, not her theory of decision-making. Rule consequentialists claim that the rightness of an act is determined by its conformity with a rule that is justified by the consequences of its general acceptance, whereas act consequentialists claim that the rightness of an act is determined by the consequences of that act itself. It is hard to find an act consequentialist these days who is not an indirect consequentialist. But it is theoretically possible for rule consequentialists to be indirect consequentialists also. This will be the case if the set of rules that they recommend as a decision procedure differs from the set of rules that they propose as a criterion of rightness. (For a clear discussion of these issues, see section 4 of Hooker 2004).

Principles of justice should be understood within utilitarianism as secondary principles of the kind referred to above. They are aimed at identifying a set of policies, rules or procedures, general acceptance of which can be expected to maximize aggregate wellbeing over the long term. The subdivisions of justice can then be distinguished by the specific type of moral problem that the principles in question are designed to address. Thus, criminal, compensatory, civil-political and distributive justice will refer, respectively, to the sets of secondary principles that are to be used to evaluate i) laws concerning

“overwhelming majority” rather than by everyone, the latter being unrealistic. There are several issues to settle in formulating indirect consequentialism more precisely that are not important for my purposes here; see Hooker 2004, especially sections 6.2 – 6.3, for a more extended discussion.

²⁹ As Hardin explains:

[T]here are at least three in-principle cognitive obstacles to our calculating the overall good of the consequences of our actions: (1) we lack the information required to carry out such calculations... (2) we lack relevant causal theories of the implications of our actions, and (3) we could not do the necessary calculations in any case because our minds have limited capacity (1988, 8)

punishments for crimes, and procedures for applying those laws, ii) the type and amount of restitution that is to be made for injuries of various kinds, iii) the distribution of basic personal and political liberties³⁰, and iv) the distribution of benefits and burdens (other than basic liberties and punishments) amongst individuals. Distributive justice can itself be partitioned into further subdivisions, distinguished according to the specific *distributive* problem that is at issue. Sometimes what we are concerned to do is to identify a set of norms to guide distributions amongst small-scale groups of individuals, such as families, teams, or other local associations. At other times, we are interested in identifying criteria for evaluating much larger distributions, such as the allocation of burdens and benefits amongst the members of a single political community, or amongst people who live in distinct political communities (perhaps, amongst all living human beings). We can call these subdivisions, respectively, local, domestic, and global distributive justice.

An important feature of principles of distributive justice, as they are standardly understood, and as I will be understanding them here, is that the duties arising from them are primarily collective rather than individual in nature. Its concern with the distribution of benefits renders utilitarian distributive justice, in at least some of its aspects, a branch of what is commonly called “beneficence” in the literature. But it is distinguished from other branches of beneficence in being a mass operation (c.f. Hardin 1988, 40). Because principles of distributive justice concern the way in which goods and bads are distributed across whole groups of people – and often quite large groups – they can generally be satisfied practically only by means of collective action, often through institutions. While individuals will have moral duties to do their part in promoting the state of affairs called for by a principle of distributive justice, then, the duty of distributive justice itself falls in the first instance on the group.³¹

The way in which the move to indirect utilitarianism provides resources to solve the problem with which we began should be clear. In its indirect form, those features of utilitarianism that cause it to clash with the everyday conception of distributive justice are likely to be significantly attenuated. The secondary principles of justice that utilitarians select will be pluralistic, and may be explicitly distributive, focused on the claims of individuals, or accommodating of

³⁰ Given that personal and political rights differ in significant respects from other socio-economic goods, I find it analytically useful to mark off their distribution as a separate sub-category of justice. This is not to deny that, in practice, questions regarding the proper distribution of the basic liberties and other socio-economic goods will often be closely related, given that the distribution of the former will often be highly consequential for the distribution of the latter, and *vice versa*.

³¹ C.f. Hardin 1988, 126. It is worth emphasizing that some moral problems – including some that I will discuss in the following chapters – generate duties of both distributive justice and individual beneficence. For instance, where overseas famine relief is concerned, the question of what amount of its tax revenue one’s government ought to contribute to alleviate the famine is a question of distributive justice; the question of what you personally should do with your after-tax income to promote the same goal is a question of individual beneficence. I will here be concerned exclusively with questions of the former kind.

backward-looking notions such as desert.³² The indirect strategy does, however, introduce some new challenges of its own. Three of the more important objections to indirect utilitarianism are the following:

1. *Wishful thinking*. Indirect utilitarians generally claim that the secondary principles that would be sanctioned by the principle of utility will be quite similar in form to principles of everyday moral thought, or to attractive principles proposed by non-utilitarian moral theorists. But this is self-delusion. Utilitarians do not give us convincing arguments for why their theory supports the attractive principles that they propose, rather than any of the infinitely many other options instead.

2. *Wrong reasons*. Even if utilitarians could convince us that their secondary principles would coincide in content with *prima facie* attractive moral principles, their account would remain fundamentally unsatisfying. This is because the ultimate justification that utilitarians give for their secondary principles is highly counter-intuitive: if utilitarians ask us to do the right thing, they ask us to do it for the wrong reasons.

3. *Instability*. Even if it can be shown that, as a general matter, compliance with a given secondary principle will maximize utility, there will almost certainly arise specific occasions on which violating that principle will maximize utility instead. This means that utilitarians cannot account for our sense of the stringency of principles of justice and rights: their account renders those principles and rights insecure.³³

³² Another welcome feature of indirect utilitarianism worth briefly mentioning is the way in which it helps to answer the following general objection to utilitarianism as a political theory. Rawls and others have claimed that explicit acceptance of utilitarianism as the moral foundation of public life would have disturbing effects on the way in which citizens see and relate to each other, undermining self-respect, "civic friendship and social solidarity" (Rawls 1971, 90-2). The alternative in which utilitarianism is not taken as the public conception of justice, but is instead cabined off for the exclusive use of a governing elite ("government house utilitarianism") is felt to be distasteful or dangerous. It is debatable whether or not explicit appeal to utilitarianism in public life would have these effects. But even if it would, the move to indirect utilitarianism suggests that utilitarians should not be too concerned. This is because, on an indirect approach, direct appeal to the principle of utility in the course of public affairs, not only by the general population but across the board, will be the exception rather than the rule. On such matters as a) the interpretation and application of secondary principles, b) adjustments to those principles over time, c) exceptional cases and d) new challenges in hitherto unaddressed domains of moral decision, explicitly utilitarian reasoning may sometimes be useful. But it is the secondary principles recommended by the principle of utility that are to play by far the most significant role in guiding public policy. Of course, if it turned out that, even despite this, an underlying public acceptance of utilitarianism did have the negative effects on self-respect and fraternity mentioned above, and if those effects were severe, utilitarians might have to reconsider the role of their theory in public life.

³³ Two other familiar challenges are the *psychological dissonance* objection, according to which acceptance of indirect utilitarianism produces a kind of deliberative schizophrenia in the moral agent ("I shouldn't lie!" "But wait - right now I *should* lie!"), and the *abdication* objection, according to which the move to indirect utilitarianism equates to utilitarianism ushering itself

Each of these objections points to a reasonable concern, and much of what I say in the following chapters can be understood as an attempt to answer them, in regard to the special case of global distributive justice. It might be useful to briefly say something in advance about the general form of response that I will adopt in each case.

If indirect utilitarians are to answer the *wishful thinking* objection, they need to provide a convincing set of reasons why full-blooded utilitarians should be expected to support the secondary principles that they propose, instead of supporting other (perhaps less intuitively attractive) secondary principles instead. It will not be enough for utilitarians to point to the fact that the plausible secondary principles that they propose contain welfarist or consequentialist elements. This is because there is a major difference between contributing to welfare (which general acceptance of most familiar moral principles can perhaps be expected to do in some way or another) and maximizing its sum total. Some plausible case needs to be made that general acceptance of one's secondary principles will achieve the latter, much more ambitious, goal. In taking on this task, it would be foolish to hope that secondary principles can be derived either in a strict deductive fashion from the principle of utility, or by means of amassing heroic amounts of empirical data. The most that can be done is to offer a set of considerations that, together, provide a *prima facie* case for a strong contingent connection between the principle of utility and the secondary principles with which one ends up.

In responding to the *wrong reasons* objection, utilitarians should acknowledge that there is no clear basis in everyday moral thought for the suggestion that utility maximization lies at the root of all morality. But they should emphasize that it is debatable how to interpret this fact. While common sense does not deliver a utilitarian theory of justification, it is not clear that it rejects one either. Common sense is arguably just silent on the question of what it is that ultimately justifies many of its principles. Where the wrong reasons objection has more force is when it points to more specific, first-order moral considerations for or against certain policies or actions that utilitarianism does not seem able to accommodate. Here the utilitarian has two main strategies open to her. She can attempt to show that the considerations in question are, on reflection, unattractive in some way, or she can attempt to show that her theory, properly interpreted, does in fact incorporate them.

If the *instability* objection is to be undermined, two things will need to be done. First, a plausible case will need to be made that, in practice, morally sanctioned violations of utilitarian secondary principles will be rare. The plausibility of this claim will depend on the strength of the initial arguments given for the principles in question. Second, the utilitarian will need to explain our intuitive resistance to

entirely off the scene (Smart and Williams 1973, 135; Rawls 1971, 158-9). Although I do not find either of these objections compelling, I lack the space to address them here.

violating her principles, in those rare cases where violations are permitted or required. Utilitarians will generally claim that it makes sense as a psychological matter that we should find it difficult to temporarily suspend attachment to principles that generally serve us well. It can also be argued that such resistance is to be welcomed by utilitarians, insofar as inflexible devotion to good principles can be expected, over the long run, to maximize the general welfare.

It is reasonable to wonder how far one can go with the above strategies, and I am sure that some people will not consider what I say in the following chapters to go far enough. I do, however, think that an acceptable response can be made to each of the above objections, and will try my best in what follows to make that case. The best way to commence this task is to descend from the fairly high level of abstraction at which the discussion so far has operated, and consider in more detail some issues concerning the content of principles of distributive justice, on an indirect utilitarian theory.

1.3 Domestic distributive justice: Outline of a utilitarian approach

Although the focus of this dissertation is on global distributive justice, it will be useful, for two reasons, to consider the case of domestic distributive justice first. For one, at least some of the key considerations that are relevant at the domestic level extend to the global level, and those considerations are easier to get a grip on in the domestic case. The smaller scale, more transparent structure, and more familiar nature of the domestic context allow us to sidestep some complications that are best postponed until later. For another, it will turn out on the story that I tell that domestic distributive justice, although not continuous with global distributive justice, is (in a sense to be explained) an important part of it. I will therefore need to provide an account of what the principles of domestic distributive justice consist in if my case is to be complete and convincing at the global level.

It is now standard, among utilitarians and non-utilitarians alike, to understand principles of domestic distributive justice as applying to the core social, political and economic institutions of a society: what Rawls terms that society's "basic structure". It is the "way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages" (Rawls 1971, 6) that determines whether or not a society is just. We can call the basic structure the "subject" of domestic distributive justice. The "agent" of domestic distributive justice – the entity responsible for ensuring that the basic structure is just – is generally understood to be the state (in a democracy, the people, acting through the state's legislature).³⁴ I will assume these two theses in what

³⁴ It is important to keep the subject of domestic distributive justice – social institutions, or more precisely the way in which those institutions distribute advantages – distinct from the agent. It is easy to confuse the two, because the term "institution" is ambiguous between two readings (Pogge 1989, 21-3). On the first reading, the term refers to "organized patterns of socially constructed norms and roles, and socially prescribed behaviors expected of occupants of those roles, which are created and re-created over time" (Goodin 1996, 19). Institutions in this sense are social practices, or forms of collective activity. On the second reading "institution" refers not to

follows.³⁵ Drawing on the above discussion, we can therefore say the following. Utilitarian principles of domestic distributive justice are those secondary principles that are to be used to morally evaluate the way in which a) the basic structure of a society b) allocates benefits and burdens (excluding basic liberties and punishments) amongst c) the members of a political community governed by a state.

Which principles should an indirect utilitarian select for this purpose? In answering this question we need to keep in mind the specific constraints that agents working within domestic social and political institutions face. The most significant are the following:

a) *epistemic constraints*: our limited knowledge, in general, of the qualities and circumstances of individuals and the likely outcomes of our actions or policies on their future levels of wellbeing.

b) *practical constraints*, such as limits on information processing and technical capacity.

c) *social constraints*, especially i) pervasive disagreement concerning the good, ii) conflicts of interest across individuals, and iii) problems in coordinating action amongst many actors.

d) *principled constraints deriving from the nature of wellbeing*. If, as is plausible, autonomous action and the achievement of goals by individual agents themselves are important contributors to wellbeing, individuals must necessarily take some responsibility for their own wellbeing if they are to achieve it.

e) *efficiency constraints*. Some attempts to directly increase the wellbeing of other individuals may result in a reduction of incentives on the part of those individuals to attend to their own wellbeing, which may end up reducing the aggregate total.

In what follows I will refer to these factors collectively as “the strategic constraints”. Each of them suggests that an attempt by utilitarian policy-makers to implement the principle of utility directly – by judging every social arrangement against it – would surely misfire.³⁶ As a result, utilitarian theorists

practices but to actors (or, in Rawls’ terms, “associations”), such as organizations or corporations. (Think “government” vs. “form of government”). In speaking of institutions, I will here have the former reading in mind.

³⁵ Neither is entirely clear or uncontroversial. There exists some debate both over what exactly should count as part of the basic structure, and over whether or not individual citizens, in their private capacity, are to be regarded as agents of domestic distributive justice. (See Cohen 2000, Scheffler 2006, Miller 1999, 12).

³⁶ I take it that this is fairly evident, but to elaborate: constraint a) suggests that policy-makers are unlikely to be very good at reliably working out how to increase the wellbeing of any single individual, at least beyond a certain point. Constraint b) suggests that performing this calculation

of domestic distributive justice cannot simply assert the principle of utility and then vacate the premises,³⁷ but must instead engage in some of the key controversies that animate the non-utilitarian camp. Chief among these controversies, and the ones on which I will focus here, are the following:

- 1) *The “distribuand” question.* What are the goods the distribution of which is the concern of domestic distributive justice?
- 2) *The “metric” question.* What it is that domestic social and political institutions are to use for the comparative evaluation of individual advantage?
- 3) *The “principle(s)” question.* Against which criteria should the way in which the domestic basic structure distributes the distribuand be judged?

1.3.1 The distribuand and metric of domestic justice: desiderata

Wellbeing itself can be neither the distribuand nor the metric of justice. In a distribuand, we are looking something we can detach from individuals, move around, and allocate to others. In a metric, we are looking for something that is epistemically accessible to second parties and capable of being situated, in a publicly verifiable fashion, in relation to a scale of some kind. Wellbeing fails on both of these fronts. Given that wellbeing is, on any plausible account, at least partly subjective in nature, it is difficult for persons other than the subject to reliably measure. And all that can be distributed by social institutions, strictly speaking, are the means to wellbeing, not wellbeing itself.

In selecting alternative candidates for each of these roles, a utilitarian needs to keep in mind the following four desiderata, derived from the strategic constraints listed above:

Accuracy. The distribuand or metric ought to be a reasonably accurate proxy for wellbeing. If we cannot distribute or measure wellbeing directly, we ought to at least try to distribute or measure something that is reliably correlated with, or productive of, it.

for an entire population at once is going to be a still more challenging task. Constraint c) i) suggests that any attempt to base social policy directly on a moral principle as controversial as the principle of utility would be likely to incite resistance. Constraints c) ii) and iii) suggest that what is required is a framework of settled, simple, easily communicable rules to coordinate collective action in everyday situations, and to deal with the conflicts that arise within it. And, finally, both constraints d) and e) suggest that any attempts to generate wellbeing will need to reserve an important role for freedom of action and individual discretion on the part of each member of the population.

³⁷ This is why the following reply by Peter Singer to Andrew Kuper is unsatisfying: “I’m not sure why Kuper says that I have no theory of justice. It’s no great secret that I’m a preference utilitarian, and so he could have inferred that I believe that goods ought to be distributed so as to maximize the satisfaction of preferences in the long run.” (Singer 2005, 180). By itself, the principle of utility is not a theory of justice.

Generality. Social policy should be focused on those factors that have proven over time to be the most reliable contributors to human wellbeing. We should be looking for goods that as a general matter have this result, whatever the variance in their importance from person to person.

Workability. The metric must not be too inaccessible or complex to identify, and the distribuand must be reliably capable of manipulation by human agents in the context of social institutions.

Transparency. The extent to which various individuals hold the distribuand or score on the metric ought to be publicly verifiable to a reasonable degree of certainty, in order to alleviate concerns about corruption, inefficiency or unfairness in public decision-making.

1.3.2 *The distribuand of domestic justice*

In order to have a good chance of fulfilling the accuracy requirement on the distribuand of domestic distributive justice, a utilitarian should start by returning to the basic contributors to human wellbeing that I listed in the introduction. I suggested that the list in question should include at least the following:

pleasure or enjoyment, physical and mental health, social interaction (especially, close personal relations), autonomous action, certain sorts of understanding, various forms of accomplishment, some minimal degree of desire satisfaction, and the pursuit and achievement of personally endorsed goals.

In light of the strategic constraints, there is no feasible way for political agents to directly regulate the distribution of these things. The appropriate question when selecting the distribuand of justice is, then, the following: What sorts of “proxy” goods or opportunities are most likely to produce the above contributors to wellbeing? I suggest the following list:

1. health care, food, clothing, housing, a safe and unpolluted environment³⁸
2. education
3. income and wealth
4. decent and comfortable work
5. leisure time
6. the “social bases of self-respect” (Rawls 1971): whatever, over and above the preceding (except the basic liberties) is a) needed in a particular social context for an individual to have a sense of him or herself as a worthwhile and dignified person, and b) a feasible object of social distribution.³⁹

³⁸ These goods are grouped together because they relate to the basic biological requirements of survival.

³⁹ C.f. Adam Smith: “By necessities I understand not only the commodities which are indispensably necessary for the support of life, but what ever the customs of the country renders it indecent for creditable people, even the lowest order to be without.” (1776, 469).

Call these “standard goods”. In assessing the proposal that standard goods are the appropriate distributand of justice, we should consider how well the above list fares on the four desiderata that I listed earlier. The criticisms most likely to arise here concern the *generality* and *workability* requirements. The list will violate generality if it can be shown that it either includes socially distributable items that are unnecessary for human wellbeing, or does not include such items as are necessary. To alleviate such concerns, I should emphasize, first, that the aim of the above list is to suggest the *kind* of things that we should be looking for in a distributand, rather than to press a fixed set of specific items, and, second, that I intend it to be interpreted in a sufficiently flexible fashion to allow for variation in the appropriate distributand across different societies.

We can distinguish two ways in which inter-societal variation in standard goods might occur, one which I will term *weak*, the other *strong, variation*. Weak variation will occur when two societies share the same list of standard goods, abstractly specified, but differ over their specific interpretations of what it is that each good involves. Strong variation in standard goods will occur, on the other hand, when there is no single (complete) list of goods, even abstractly conceived, that applies within both of a given pair of societies. Weak intersocietal variation in standard goods is likely to be endemic, due to political, economic, socio-cultural and environmental differences across countries. There is, for instance, no single type of education that it is appropriate to aim for in every existing or imaginable society. Strong variation, on the other hand, is likely to be much rarer: the list given above draws on quite basic aspects of the human biological and social condition that are plausibly universal. Nonetheless, I mean to leave open the possibility that some goods on the list might be entirely removed, and others added, according to the case at hand. In deciding, as a practical matter, what precisely ought to be on the list in the case of a given society, we can take up the suggestion, made by both Sen (1987, 1992) and Scanlon (1975), that the value of a given resource within a community is best determined by public moral deliberation within that community regarding its importance in contributing to a variety of worthwhile lives.

A broadly similar concern is likely to arise in regard to the *workability* criterion, and can be given a similar response. Thus, it might be objected that, whether or not all people do need all of the items on the list in order to live good lives, only some societies are capable of securing some of those goods. Again, my proposal is intended to accommodate this point. The nature of the items on the list ought to be decided on a case-by-case basis by reflection on the options available to the particular society at issue. Miller sums up the approach that I am advocating here when he writes:

There is no canonical list of primary goods...but instead a moveable boundary between justice-relevant and justice-irrelevant goods, the position of the

boundary depending partly on the technical capacities of our social institutions, and partly on the degree of consensus that can be reached about the value of particular goods (1999, 11)

1.3.3 *The metric of domestic justice*

I think that a resourcist approach to the distributand of justice, of the general kind offered above, is (or ought to be) uncontroversial. The more interesting question concerns not the distributand, but rather the *metric* of distributive justice: what it is that social institutions are to use for the comparative evaluation of individual advantage. When assessing the justice of the distribution of standard goods amongst the members of a population, what should we look to in order to work out whether person *A* is doing better than person *B*? The chief competing accounts in the literature on this question are the capabilities and resourcist approaches. Resourcists argue that in making such assessments we should look to individuals' holdings of the goods themselves. *A* is doing better than *B* if she has a higher index of the standard goods that apply within the society at issue. Capabilities theorists (e.g. Sen 1987, 1992, 2000; Nussbaum 2000) argue that we should look instead to the capability sets of individuals (understood as the capacity of individuals to attain various valuable functionings). *A* is doing better than *B* if she has a more extensive set of valuable capabilities than does *B*.

A helpful way of understanding the resourcism / capabilities debate is as a dispute over the extent to which principles of justice ought to be based on facts about the standard, as opposed to the idiosyncratic, needs of individuals. Resourcists rely on ideas about standard human needs not only to decide the types of things with which justice ought to be concerned (the distributand question), but also to measure and compare levels of advantage. Capabilities theorists dispute the latter move. Their motivation for doing so is the idea that we cannot straightforwardly read a person's quality of life off the resources that we find in her command. By virtue of the differential capacities of individuals to "convert" resources into valuable functionings, possession of a given bundle of resources will have differential impacts on the wellbeing of different individuals.⁴⁰ If we are to properly take into account such individual differences we need to look behind the resources that people hold to facts about their capacities to "do" and "be".

I think that the resourcist approach gives the better answer on this question – and due precisely to the feature highlighted by Sen. Resources are the appropriate metric of distributive justice *because* they abstract from individual differences. To see this, let us return to the desiderata given earlier. The chief

⁴⁰ Sen suggests two reasons why the conversion capacities of individuals, and hence the effect of a given resource on their quality of life, may vary. The first derives from differences in the "internal" features of individuals: smaller people, for instance, generally need less food to sustain a given degree of activity than do larger people. The second is due to differences in "external" features, i.e. differences in the environments in which individuals find themselves, such as "public educational arrangements ... the prevalence or absence of crime and violence ... epidemiology and pollution ... [and] the nature of community relationships" (Sen 2000, 70).

advantage of the capabilities approach is in relation to the accuracy criterion. Capability sets are clearly a closer proxy to wellbeing than are resource holdings, for the reason that Sen highlights. But this fact is a very mixed blessing. This is because fulfillment of the accuracy criterion beyond a certain degree undermines fulfillment of the other three criteria of generality, workability and transparency. A capabilities metric is much harder to operationalize politically than is a standard goods metric for the following three reasons: i) there are many morally relevant functionings, ii) many non-material functionings are very hard to measure, and iii) capabilities or opportunities to achieve those functionings are even harder to get an empirical grip upon than are the functionings themselves (it is impossible to measure an individual's capability set directly). Given the severity of these operational difficulties, a resourcist approach to the metric of justice seems to me to be the only feasible option.⁴¹

That said, there remains an important role for capabilities as a supplement to an otherwise robustly resourcist account (c.f. Cohen 1995). This is because, although as a general rule the extent to which a person possesses a given capability is difficult or impossible to measure, some specific, basic capabilities present an exception to this rule. Cases of physical and mental disability, or of extreme destitution, present good examples. When a person lacks a leg, it is not difficult to ascertain and verify to the satisfaction of the public whether or not that person can walk unaided. Given the plausible connection between severely limited capabilities of this sort and welfare deficits, there is therefore a utilitarian reason for departing from an exclusively resourcist metric in such exceptional cases. This will plausibly result in a utilitarian justification for the channeling of extra resources to those with special needs in just the way that Sen argues is necessary.⁴² Sen's approach, then, is not best understood as a straightforward alternative to a resourcist account but rather as a useful pointer to a friendly amendment.⁴³

1.3.4 Principles of domestic distributive justice.

⁴¹ Similarly, see Rawls, who notes that it is "true that any use of primary goods must make certain simplifying assumptions about citizens' capabilities" but that "the idea of effective basic capabilities without those or similar assumptions calls for more information than political theory can conceivably acquire and sensibly apply" (1999, 13).

⁴² That addresses the problem of "internal" differences, in at least some important cases. What of that of "external" differences? (fn 40 *supra*). Again, I don't think that the cases to which Sen points call for a fundamental departure from resourcism. We should merely be careful to adopt a sophisticated understanding of what it is for someone to have access to resources, according to which certain environmental factors are understood to diminish that access.

⁴³ It is not entirely clear that Sen would object to this characterization. In *Development as Freedom*, he includes as one of three acceptable ways of incorporating capability considerations into social evaluation the "supplementary approach", which "involves continued use of traditional procedures of interpersonal comparisons in income spaces, but supplements them by capability considerations" (82). As this quotation suggests, Sen's main concern in this book is to undermine an exclusive focus on *income* comparisons, a concern, it is worth noting, that the resourcist approach that I advocate here accommodates, even without the explicit capability supplementation.

I have so far argued that what I above termed “standard goods” should be both the distributand and the metric of utilitarian domestic distributive justice, with the qualification that such goods be supplemented in their metric role by the use of capabilities in certain special cases. The third fundamental issue that a theory of domestic distributive justice needs to settle concerns the principle (or principles) on the basis of which these standard goods ought to be distributed amongst the members of a political society. Within a utilitarian framework, this question takes the following special cast. Our goal is to identify a secondary principle (or set of principles), suitable for guiding the design and workings of domestic social and political institutions, general acceptance of which can be expected to maximize the aggregate wellbeing of the population over the long term. Answering this question in the detail required for the purposes of a comprehensive account of domestic distributive justice would take us far afield. The following should therefore be taken in the spirit of a general schema, gesturing at the direction that that more comprehensive account would take.

The Maxificing principle

I suggest that we start with the following idea:

Maxificing. Utilitarian domestic distributive justice requires that the basic structure of a society – its social, political and economic institutions, taken together as one scheme - be arranged so as to maximize over time the number of its members who possess an adequate amount of standard goods, where an “adequate amount” is:

- i) the amount of those goods that is normally necessary in the society in question if an individual is to attain a minimally decent level of welfare
- ii) subject to increase in the case of individuals with transparent limitations in basic capabilities.

The term “maxificing” (which I take from an unpublished manuscript of John Roemer’s) is shorthand for “maximize the number of people who satisfice”, where (on my interpretation) to “satisfice” is to attain the “adequate amount of standard goods” specified above. This maximizing principle should be distinguished from a perhaps more familiar candidate, according to which justice requires that *each* person satisfices, a requirement that I consider to overestimate the capacities of domestic social and political institutions.

There are three main questions to be answered in regard to *Maxificing*. In what does a minimally decent level of welfare consist? What amount of standard goods is normally necessary if an individual is to attain a minimally decent level of welfare, thus specified? And why should this principle be attractive to a utilitarian?

Although the idea of a minimally decent level of welfare is admittedly imprecise, I think it possible to reach a reasonable degree of social consensus on what it

involves. It is perhaps best identified in terms of the things that it rules out. We can be confident that a minimally decent level of welfare is *not* achieved, for instance, when a person: routinely works lengthy days of hard or dull and repetitive labor; suffers, or is routinely at significant risk of suffering, physical or emotional abuse; lacks income, to the extent of being unable to purchase basic necessities; and is in acute or chronic physical or mental distress. The amount of standard goods that is normally necessary if an individual is to avoid outcomes of this kind is likely to vary to some extent with the particular society at issue. But, I think that we can say at least the following as a general matter. A person will need enough food to achieve the normal daily caloric requirements for a person of her age, weight and lifestyle; a private room heated to a comfortable temperature in a building meeting basic health and safety standards; non-toxic air quality; stable and respectable employment, with at least one full day off work per week; safe access to public spaces; and sufficient income or wealth for discretionary spending on some desired goods beyond those listed so far. In most modern societies education at least up to the level of basic literacy and numeracy, and usually beyond, will also be necessary. The case of health care is somewhat more difficult, given that individuals differ more radically in their health needs than they do in their needs for the other items on the list of standard goods given earlier. We cannot, then, specify the precise amount of health care that is required, even generally, in order for individuals to attain a minimally decent welfare level. We can presumably, however, say something general about the level or type of health itself that is generally required if a person is to attain that level. We can understand an adequate amount of health care to be whatever amount is required to secure a person that level or type of health.⁴⁴

In determining whether or not a given individual possesses an adequate amount of standard goods overall, we ought to allow room for some intrapersonal trade-offs between specific goods. This is because the general case, at which I have suggested social policy ought to be directed, admits of exceptions. In particular, some people do not *want* the amount of a given standard good that is generally necessary in their society in order to attain a minimally decent level of welfare. This is usually because they prefer to trade off some amount of that good for greater amounts of other goods: as when an executive works 7-day weeks in order to advance her career or gain a six-figure salary. Because a certain degree of desire-satisfaction is a central contributor to wellbeing, principles of distributive justice ought to permit room for such intrapersonal trade-offs. In practical terms, this will generally mean that social policy ought to be aimed at ensuring

⁴⁴ I am no philosopher of health. Intuitively, however, we ought to be able to say something like the following. A minimally healthy person is one who, at least, a) is mobile, b) can perform a range of everyday physical tasks, c) does not suffer acute or chronic pain, and d) lacks various forms of generally recognized disease. It is clear that some people are able to attain a minimally decent level of wellbeing even while suffering deficits judged against this standard. But such exceptions to the rule should not cause too much concern where the principle under consideration is concerned. That principle is intended to provide a general guideline for the purposes of social policy. When our focus is on the lower ranges of wellbeing, it is appropriate to err, if anywhere, on the side of generosity.

that individuals have *access* to an adequate amount of specific standard goods, rather than ensuring that individuals *have* those goods.

Maxificing should appeal to a utilitarian for the following set of reasons. First, each of the evils that achievement of an “adequate” level of standard goods eliminates seriously undermines one or more of the standard contributors to human wellbeing that I listed in the introduction (and again at 1.3.2). People who are overworked, ill, hungry, physically insecure and stigmatized generally experience low levels of wellbeing, and these levels are often “transferred” to their family members or to others with whom they come into contact. Second, people whose lives are stunted by suffering and deprivation represent a tragic waste of human potential. Their talents and ideas are unable to be developed and put to use, to the detriment of the welfare of future as well as present generations. Third, identifying and remedying the evils that *Maxificing* is directed at eliminating is in many cases not an especially difficult task: the extent to which people experience these basic evils is reasonably transparent and, at least given relatively propitious circumstances and well-functioning institutions, it does not take a great deal of resources to fix them. All of the above means that the policy-maker reliably gets a big bang for her buck, in utilitarian terms, if she focuses her attentions on basic welfare.

I can think of two main reasons why one might doubt the utilitarian credentials of *Maxificing*. The first of these can be answered; the second points to a need for supplementation. The first source of doubt runs as follows. I noted in the introduction that utilitarians are distinguished from other welfare consequentialists by their commitment to sum-ranking: all that matters to them in evaluating state of affairs is the total amount of welfare that those states of affairs contain. But then what business have they focusing on absolute thresholds of welfare, rather than purely the aggregate sum? This, it might be suggested, looks suspiciously like a retreat to sufficientarianism rather than arithmetic addition as an interpersonal aggregation function. The response to this objection involves reiterating that *Maxificing* is intended as a secondary, not a primary, principle. The appeal to threshold welfare levels that it incorporates is being proposed as a way of evaluating societies not from the “perspective of morality”, as it might be put, but from the perspective of distributive justice.⁴⁵ The reason that such an appeal makes sense for utilitarians from the latter perspective, although not from the former, is that, as noted just now, minimally

⁴⁵ To illustrate in a little more detail how these two evaluatory perspectives differ, imagine that we have two societies, *A* and *B*, each with 100 citizens, and in each of which 50 citizens attain a decent threshold level of welfare. In *B*, however, the other 50 citizens are much better off than are the other 50 citizens in *A*. Judging these societies from what I above called the “perspective of morality”, sufficientarians will rank *A* and *B* equally; utilitarians will rank *B* higher than *A*. But judging the same societies from the perspective of distributive justice, utilitarians and sufficientarians might well (though need not) agree in their rankings. Assume for the moment that *Maxificing* is the sole principle of distributive justice, according to both utilitarianism and sufficientarianism, and that both societies are doing the best they can on the *Maxificing* front, given the institutional options available to them. In this case, both utilitarians and sufficientarians should rank *A* and *B* as equally distributively just.

decent levels of welfare are relatively easy to identify and manipulate politically, and therefore deal well with some of the strategic constraints listed earlier.

Egalitarianism

A second reason for doubting the utilitarian appeal of the maxifying principle is, however, more compelling. This is the worry that *Maxifying* is unjustifiably unambitious: it does not sufficiently exploit the wellbeing-enhancing capacities of modern social and political institutions. One wonders if it could not somehow be combined with another secondary principle, compliance with which would result in greater social welfare. A useful way to approach this question is to consider the various ways in which equality in income and wealth across individuals (or “material egalitarianism”) can be expected to contribute to social welfare.

Two of the more familiar reasons for thinking so are the following:

1. Income and wealth have *diminishing marginal utility*: Paris Hilton’s next \$50 plausibly produces much less additional wellbeing in her hands than that same \$50 would in the hands of a homeless person. This fact suggests that a move to a more equal domestic income and wealth distribution would on balance produce more wellbeing than it cost.
2. Inequalities of income and wealth have been argued to depress *economic growth*, as compared to an alternative state of affairs in which income and wealth are more equally distributed (see Ray 1998, pp.197-241). This result is claimed to be especially likely in developing countries, where large poor populations lack the capital to invest in education, health care and sustainable livelihoods. If economic growth results in greater social welfare (which, it is worth stressing, may or may not be the case), this fact would provide a further utilitarian reason to flatten out the income and wealth distribution.

Beyond these more traditional economic arguments for material egalitarianism, we can identify a series of additional arguments of a more social or political cast⁴⁶:

1. Inequality of wealth can undermine *political liberty*. Wealthier citizens, by virtue of their potential financial contributions and influential social connections, have greater ability to push their agendas through the political process. The political liberty of those who have fewer resources is thereby rendered ineffective.
2. Inequality of income or wealth can lead to *oppressive or dominating relationships*, with their attendant *loss of autonomy*.⁴⁷

⁴⁶ The following list draws extensively on Scanlon 2003.

⁴⁷ This concern differs from the first, insofar as it refers to relationships within the interpersonal sphere more generally, not solely to those that arise in relation to formal political institutions.

3. Material inequality can lead to *dissatisfaction*, insofar as the enjoyment that people gain from the goods in their possession depends not only on the objective features of those goods, but also on the way in which those goods stack up relative to the goods of others.

4. Inequality of wealth tends to decrease *social solidarity*, thereby diminishing opportunities for beneficial social interaction amongst members of distinct socio-economic groups.

5. Inequality of wealth may undercut the *justice of democratic and liberal institutions*. The same undermining of social solidarity mentioned in 4. above can reduce the motivation of citizens to vote on the basis of the common good rather than on the basis of their own partisan concerns. Material inequality can also result in *procedural unfairness*, to the extent that it distorts what would otherwise be a balanced consideration of the interests of the various parties affected.

6. Inequalities of income or wealth can lead to feelings of inferiority, humiliation and *loss of self-respect* on the part of individuals at the bottom of the wealth distribution.

7. Great social inequality tends to lead to stigmatizing *status* differences, a phenomenon that occurs when the feelings referred to in 6. come to be recognized as a matter of common knowledge amongst the members of a society. Such status differentiation, and the practices of deference and privilege that accompany it, both reinforce the feelings in question and produce wider social effects that are of distinct concern in themselves.⁴⁸

If, as seems very plausible, political and personal liberty, fulfilling social relationships, a politics of the common good, self respect, autonomous agency, satisfaction with one's social position, and a certain kind of status equality are important contributors to human wellbeing, and if relative equality of income and wealth is a necessary condition for the achievement of each of these things, it would seem that we can derive a strong *prima facie* argument for material egalitarianism from utilitarianism. It is also worth noting that some of the social and political arguments listed here extend to the case of inequalities in standard goods other than income and wealth, making these arguments much broader in scope than the economic arguments noted earlier.

⁴⁸ The corruption of personal and political relationships that characterizes inegalitarian regimes is one obvious such effect. There may also be less obvious ones. Recent research suggests that there exist significant differences in health outcomes between those of differing social status: "Not only do the poor have much worse health and much lower life expectancies than those who are not poor, but those who are relatively affluent and enjoy high status have worse health than those who are at a still higher status" (Hausman & McPherson 2006, 205) - to the extent that Swedes with PhDs have lower mortality than Swedes with BAs. A recent study also suggests that the health of those with lower social status is worse when they live in neighborhoods predominantly occupied by those of higher status than when they live in "low-status" neighborhoods (Stanford School of Medicine, 2006).

We should, however, consider an important objection. It might be that the above arguments call only for the raising of all citizens to a certain *absolute* level of resources, not to a level equal to that of their fellow-citizens, and that, to this extent, they do not move us beyond the maxifying principle discussed in the previous section. To see how this objection might go, consider, first, the argument from diminishing marginal utility. The homeless person in the example given above is not simply less well off than Paris Hilton, but very badly off, in absolute terms. In order to show that the diminishing marginal utility of resources provides a utilitarian argument for something more extensive than *Maxifying*, we need to select a case in which both parties enjoy higher than decent levels of wellbeing. But, in fact, in cases of the latter kind it is less obvious that the less well-off party *would* derive greater marginal utility from a given additional injection of resources. Similarly, in regard to the argument from economic growth, when everyone in a society is reasonably well off it is less likely that sending resources down to the lower reaches of the income distribution actually would increase GDP.⁴⁹ Likewise, the danger that inequality in standard goods will undermine egalitarian interpersonal relations, social solidarity, self-respect and equal social status may apply only in those cases where those at the bottom end of the economic distribution are so badly off as to fail to attain a basic level of welfare. And if the desirability of political liberty and robustly democratic politics can be derived from the maxifying principle itself, as might be argued⁵⁰, there may be no significant novelty in reasons 1. and 5. above. That leaves us with the concern about dissatisfaction at one's social position relative to that of others, a phenomenon that is insufficiently strong and universal to take us very far by itself.

I am willing to believe that the arguments canvassed above may call for the raising of individuals to a certain absolute level of resources, rather than to a level equal to that of all of their fellow citizens. However, even if this were so, it would not show that satisfaction of the maxifying principle is sufficient to secure domestic distributive justice. This is because it is highly doubtful that the absolute level in question is the level required for a *minimally decent* life. We can easily imagine a society in which all persons had sufficient standard goods to attain minimally decent levels of wellbeing, but in which inequalities in those

⁴⁹ A further, more general, problem with the argument that inequality reduces growth is its weak empirical support. The World Bank notes that “[d]espite the great attention devoted to the question of a systematic relationship between overall inequality and growth at the country level, the body of evidence remains unconvincing.” (2005, 103). The most that can be drawn from the data so far is the more measured claim that in *some* cases, some specific *types* of equality (not necessarily in income and wealth) can be expected to promote growth via improved investment. Thus the World Bank claims that “judicious redistribution – of income to grandmothers, of power to poor women farmers, of credit to entrepreneurs in small firms – can increase the productivity of resources, such as land, human capital, and physical capital.” (2005, 104).

⁵⁰ Such an argument might appeal to Sen's finding that freedom of the press is associated with a reduction in the likelihood of famine in developing countries (Dreze & Sen 1989), or to the claim that a thriving democracy is necessary if political pressure is to be sustained for the sorts of redistributive policies that *Maxifying* is likely, in practice, to require.

goods nonetheless resulted in a distortion of political outcomes in favor of a wealthy minority, a loss of self-respect, social solidarity or security from domination, or (perhaps) reduced economic growth, in a way that was net welfare-reducing for the society as a whole, as against a politically available alternative in which standard goods were more equally distributed. This suggests to me that the maxifying principle will not alone address all of the concerns that a utilitarian might reasonably have about domestic inequality. Instead, an independent secondary principle calling for at least a certain degree of egalitarianism not only in income and wealth, but also in other standard goods, is plausibly necessary.

1.4 Conclusion

The result of the foregoing discussion, I suggest, is the following outline of a utilitarian conception of domestic distributive justice. The basic structure of a society – its social, political and economic institutions, taken together as one scheme – ought to be set so as to:

1. *Maxifying*. Maximize over time the number of its members who possess an adequate amount of standard goods.⁵¹

and:

2. *Resource Egalitarianism*. Eliminate large inequalities in possession of standard goods across its members over the lifespan.

I suggest that, in the design and assessment of the domestic basic structure, the first of these ought to take priority over the second. The first priority of justice ought to be to maxify; then, within that constraint, utilitarians ought to favor institutions that result in more rather than less equal distributions of standard goods over the long term.

While I consider this conception to be attractive as far as it goes, it is by no means complete. As I have just noted, the question of precisely how much equality is desirable in a domestic society – along with the questions of what considerations or conditions diminish or override that desirability, and of whether the case for equality is stronger in regard to some standard goods than others – all need to be answered before we can formulate the second principle in a more precise way. Nor is the utilitarian argument for the conception complete. Non-utilitarians can be expected to raise versions of both the *wishful thinking* and *wrong reasons* objections described earlier (1.2.1 *supra*) against it. That is, even if they find the above conception attractive, they are likely to wonder whether utilitarianism a) genuinely supports it over other potential candidates

⁵¹ Where, as noted above, an “adequate amount” is that amount normally necessary in the society in question if an individual is to attain a minimally decent level of welfare, subject to increase in the case of individuals with transparent limitations in basic capabilities.

for the role, and/or b) tells the right story about why it is attractive.⁵² But, if the account of domestic distributive justice given here can therefore only be a partial one, that partial one has provided foundations for what follows, in two ways. First, it has illustrated how an indirect utilitarian account of distributive justice, ought, in general outline, to proceed. Second, it has shown that some commonly expressed ideas about distributive justice – the importance of securing a basic level of welfare for individuals, and of securing equality along certain dimensions across those individuals – might be supported by some of the core ideas in classical utilitarianism. Both of these elements will be put to use in the global case to come.

⁵² One important version of the “wrong reasons” objection appeals to considerations of fairness. Many of us think that social inequalities not only raise questions about an inefficient or wasteful distribution of resources and threaten to undermine certain valuable social and political outcomes. They also seem, in certain cases, unfair. I think that this suggestion is important, but the issues that it raises within a utilitarian framework are sufficiently complex to warrant postponing discussion of it until Chapter 5, where I take up the question of fairness in relation to global distributive justice.

Chapter 2. Global Distributive Justice: How to Begin

2.1 Introduction

According to the preceding chapter, the role of principles of global distributive justice within utilitarianism is to provide criteria for evaluating the distribution of benefits and burdens (other than basic liberties and punishments) across persons who live in distinct political communities. The thesis of indirect utilitarianism holds that the appropriate principles to select for this role are those the general acceptance of which has the greatest tendency to promote aggregate wellbeing over the long term. A utilitarian conception of global distributive justice aims to provide an account of the substantive content of such principles. The previous chapter suggests that this task will involve, *inter alia*, specifying what it is that we ought to be concerned with distributing at the global level, the shape that a just global distribution of that distribund (or distribuands) ought to take, the appropriate metric(s) for global interpersonal comparisons, and the appropriate ordering of priorities amongst any competing goods or requirements. It will also involve some account of the nature of the political, social or economic institutions that are to be judged against the principles selected, and an account of how the responsibilities of various global agents to secure fulfillment of those principles are to be understood.

In approaching questions of this scope and complexity, it can be difficult to know where to begin. This chapter will consider how a utilitarian ought to commence the task of constructing an account of distributive justice at the global level, rejecting one option, and advocating another. The result will be the setting in place of some basic elements of a utilitarian framework for theorizing about global distributive justice, on which the following, more substantive, chapters will draw.

2.2 From domestic distributive justice to global distributive justice

One appealingly simple way of approaching the task of constructing a theory of global distributive justice is a strategy we can term *direct transposition*: an application of the principles developed for the case of domestic distributive justice, substantially unaltered, to the global population as a whole. We are to treat the world, on this approach, as one big global society, held to the same distributive norms as are individual political communities.⁵³

The use of the term “direct” must be understood loosely here, given that any attempt to implement this strategy will have to acknowledge the need for some

⁵³ Among the more famous instances of this strategy is Beitz’s claim (1979, *inter alia*) that the Rawlsian difference principle ought to be applied not only to the domestic basic structure of individual societies, but also to the global basic structure (see also Pogge). Rawls himself was more circumspect (see *infra*, 3.2.2 - 3.2.3)

adjustments in the principles applying to the domestic case, if the latter are to make minimal sense as global principles. If we take as our candidate conception of domestic distributive justice the skeletal one developed in the previous chapter, at least the following three amendments would be necessary. First, there would need to be a change in the subject of global distributive justice from the domestic to the global basic structure. The latter is generally understood to incorporate such elements as the existing body of international public and private law, the multilateral trading regime, international financial institutions such as the IMF and World Bank, and other sites and products of international regulation. Second, the move to the global level would necessitate a change in the *distribuand* of justice, due to the fact of weak and strong variation in standard goods across societies referred to at 1.3.2 *supra*. Given that a given standard good will often take different forms in different societies (weak variation), and that in some cases something that counts as a standard good in one society may have no counterpart at all in another society (strong variation), most societies will have their own unique set of standard goods. This means that if we were to advocate standard goods, *simpliciter*, as the distribuand of global distributive justice, it would be unclear which set we meant to refer to. The most promising way for the advocate of direct transposition to work around this fact proceeds by reference to the distinction made in Chapter 1 between standard goods abstractly specified (e.g. education, wealth), and particular specifications of those goods (e.g. the ability to read and write English, U.S. dollars). Call the former “global” and the latter “domestic” standard goods. In order to accommodate the fact of weak variation, globally transposed principles will need to refer solely to global standard goods. In order to accommodate the fact of strong variation, the set of global standard goods will need to comprise those abstractly specified goods whose specific instantiations appear most frequently on the various lists of domestic standard goods.⁵⁴ Thirdly, the shift to the global case will call for a change in the *metric* of distributive justice: the unit (or units) that are to be used for the comparative evaluation of individual advantage. Global standard goods will presumably fill this role in the global case, just as domestic standard goods do in the case of domestic distributive justice (supplemented by capabilities in certain special cases). In order to assess, for the purposes of global distributive justice, whether or not person *A* from society *X* is doing better than person *B* from society *Y*, we would look to their respective holdings of global standard goods. *A* will be doing better than *B* if she has a higher index of those global goods than *B*.

If the direct transposition strategy is correct, once adjustments of the above reasonably straightforward kind are effected, it should be appropriate to apply the principles developed for the case of domestic distributive justice to the world as a whole. In our case, this would result in the following conception of global distributive justice:

⁵⁴ Thus, if income and wealth play a major role in sustaining human wellbeing in most societies, they will count as global standard goods even if in some societies they do not play such a role. This move can be understood as a global application of the generality condition (1.3.1 *supra*) on the distribuand of justice.

The global basic structure ought to be set so as to:

1. *Global maxifying*. Maximize over time the number of people who possess an adequate amount of global standard goods
2. *Global resource egalitarianism*. Eliminate large inequalities in possession of global standard goods across all people over the lifespan.

- with 1. taking priority over 2.

This strategy would certainly be convenient. It also has a pleasingly cosmopolitan air: in refusing to treat the domestic case as particularly special, it looks like something well placed to appeal to the eminently non-parochial utilitarian. What should we think of it?

2.2.1 Against direct transposition

The first thing to note in assessing the direct transposition strategy is that, while it generates principles of domestic and global distributive justice that look superficially very similar, that appearance of similarity is lessened when we consider what an application of the global principles under view would actually involve. As I will now argue, a global transposition of our domestic principles will result in 1) greater difficulty in identifying the relevant set of standard goods, and in weighing up distinct standard goods against each other, 2) cruder interpersonal comparisons of welfare, and 3) indeterminacy concerning who the agent of distributive justice is supposed to be.

1. *Difficulty of selecting and weighing global standard goods*. I suggested in the previous chapter that at the domestic level we can rely on public moral deliberation to decide which goods are to function as the distributive and metric of justice. But such deliberation will be much more difficult to organize, and much less likely to be appropriately representative, at the global level. Any list of global standard goods settled upon will consequently be much more contested. It will also be more difficult at the global level to settle on a trade-off schedule: a way of weighing up distinct standard goods against each other. Such a schedule is necessary for applying the maxifying principle in situations of resource scarcity, where different goods – say, health care and education – cannot be concurrently attained, or attained at the desirable level, for some or all members of a given population. In the case of a single society, we can generally assume that there exists sufficient agreement on basic values and priorities for it to be possible to settle on a schedule of weightings that most members of the population can, at least broadly, endorse. At the global level, however, this assumption is much less secure. It will be very difficult to construct in a principled way a uniform trade-off schedule that applies across all 193 of the world's politically, economically and culturally diverse nations.

2. *Cruder interpersonal welfare comparisons*. We can identify three reasons why welfare comparisons between persons from distinct societies, by means of global standard goods, will be much more rough and ready than welfare

comparisons between persons in a single society, by means of domestic standard goods. First, some welfare-relevant holdings of standard goods may have to be treated as welfare-irrelevant when interpersonal comparisons are made at the global level. This is because, as noted earlier, in selecting the set of global standard goods, we may need to “filter out” some goods that are significant contributors to wellbeing in some societies but not in others. Given that the goods filtered out would not count as standard goods if they did not tend to have significant effects on the welfare of those who held them, this move is likely to result in misrepresentations of the welfare levels of some individuals. Second, inter-societal welfare comparisons by means of global standard goods are unable to adequately account for the relative, as opposed to absolute, aspects of individual advantage. The simple case of wealth is illustrative. The value of a given bundle of currency to a particular person depends to a considerable extent on the amount of currency held by others within her society. As Sen notes, “being relatively poor in a rich community can prevent a person from achieving some elementary “functionings” (such as taking part in the life of the community) even though her income, in absolute terms, may be much higher than the level of income at which members of poorer communities can function with great ease and success” (2000, 71). Similar points apply to the case of education, and possibly housing (for the latter, see Goodin 1995, 252-3). Third, the use of global standard goods to compare individual welfare across societies is not well placed to accommodate the fact that the members of some societies may, quite generally, have less expensive needs or goals than the members of others. To take up the case of wealth again, we cannot assume that individuals who reside in different societies derive a similar level of welfare from bundles of currency satisfying purchasing power equivalence, because the goods that those bundles can be used to buy may be considered a necessity in one society, but merely a luxury in another.⁵⁵

3. *No obvious agent of justice.* It is fairly clear at the domestic level which agent should be primarily charged with ensuring that the domestic basic structure satisfies principles of distributive justice of the kind argued for in Chapter 1. The impressive powers of coordination and enforcement possessed by the modern state render it the obvious candidate for the role. When those same principles are transposed to the global level, however, it becomes quite unclear which agent is suited to ensuring that they are fulfilled. As the world is now structured, and is likely to remain structured for the foreseeable future, the highest political authorities are the governments of individual states. But the idea of charging these individual states with the task of fulfilling the global principles given above is quite unattractive. Due to the extensive reach of those principles, and the difficulty of determining their precise requirements (see above), it is highly doubtful that the world’s states could set themselves to implement them in a manner that could be expected to even approximately hit the desired target.

⁵⁵ In addition to these points, there are also a number of pressing problems with the construction of the PPP measure itself that I set aside here.

The advocate of direct transposition is committed to claiming that the above considerations do not alter the appeal of her domestic principles when the latter are globally transposed. I think this overly sanguine. There is not much that utilitarians can do about the difficulty of formulating an accurate and workable list of global standard goods, constructing a satisfying single schedule for weighing those goods up against each other, and making precise global interpersonal welfare comparisons on the basis of them. They can, however, respond to this fact in better and worse ways. They can, for instance, attempt to formulate principles of justice that do not depend so heavily on constructing the list and schedule, or on making the comparisons, in question. (This will not be a worrying evasion if, as suggested above, global standard goods are not likely to be an especially accurate proxy for wellbeing in any case). And, importantly, they can try to identify principles that are better attuned to the capacities of real world agents. An inability to see precisely how a principle of justice might translate into action is not just a matter to be shelved until later, for the “implementation” phase. This is because it is the very point of principles of justice (within an indirect utilitarian theory, but not only there) to provide goals that are reasonably close to earth: goals that it is sensible to suggest that human agents pursue. This means that it is not clear that we even have a genuine principle of global distributive justice until we can see how that principle might interact with the capacities of the world’s major actors.

The above points suggest that the case of domestic distributive justice does not provide the convenient springboard for constructing a theory of global distributive justice that one might have hoped it to.⁵⁶ Nor, I think, should this be viewed as big news. It would in fact be surprising, given the strategic character of utilitarian principles of justice, if the significant differences that obtain between global and domestic politics did not translate into significant differences in the distributive principles appropriate to each sphere. We need to come at the task from a different direction.

2.3 Starting with the state

In my view, the best way to proceed is via a critical examination of what is by far the most salient and significant feature of present-day global institutional organization: the division of the world into a plurality of distinct, territorially-based political communities, each governed by its own state. The very first step in constructing a theory of global distributive justice, I suggest, ought to be a consideration of the extent to which this form of global organization – call it “the state system” – is morally justified.

⁵⁶ Chapter 5, section 5.6, provides some further reasons for doubting the appropriateness of the global resource egalitarian principle in particular. Section 5.5.1 also casts doubt on the appropriateness of treating the “global basic structure” as the subject of global distributive justice. These additional considerations, I hope, should together serve to cement the conclusion in the text above for those who remain unconvinced.

Not everyone agrees that political philosophers ought to be in the business of evaluating institutional arrangements as basic as the state system, for something like the following reason. The fundamental purpose of normative political theory is to guide action. Such theory is meant to tell us (at some admittedly abstract remove) what we are to do in the here and now, starting as and where we are. If it is meant to provide present-day guidance in this way, it will need to assume from the outset some fundamental facts concerning present-day reality. Many political theorists are of the view that these facts ought to include not only basic elements of “the human condition...but also political, legal, social and economic arrangements as we more or less now find them...” (James 2006, 701; c.f. Rawls 1999 11-12).⁵⁷ Searching around for a moral justification for such arrangements is, on this view, unnecessary at best, and destined for failure at worst, given that it will often be very difficult to convincingly construct the desired justification, due in part to the difficulty of considering all of the relevant alternatives.⁵⁸

I am sympathetic to this line of thought in the case of some moral questions regarding some institutions. When considering whether or not justice requires reform of an election procedure within one’s local lawn bowling association, for instance, one does not generally need to start one’s answer with a lengthy discursus on the question of whether or not that association ought to exist. Nor does one need to resolve one’s views concerning the relative merits of capitalism and market socialism when considering how one’s state’s property or labor laws ought to be revised. Most of the moral decisions that we make do not concern entire institutions in this way, but take place “at the margin” – and, given the various strategic constraints listed earlier, this is generally quite a good thing. However, in the context of some types of moral inquiry, I think that there is reason to probe more deeply, asking not merely how an institution ought to be rearranged, but also what can be said in favor of its existing at all.⁵⁹ This is most clearly the case in regard to basic institutional arrangements that have truly immense consequences for human wellbeing. In such cases, even if we cannot

⁵⁷ C.f. Sidgwick:

The utilitarian, in the existing state of our knowledge, cannot possibly construct a morality *de novo* either for man as he is (abstracting his morality) or for man as he ought to be and will be. He must start, speaking broadly, with the existing social order... (Sidgwick 1907, 473)

⁵⁸ As Sidgwick puts it: “when we abandon the firm ground of actual society we have an illimitable cloudland surrounding us on all sides, in which we may construct any variety of pattern states...” (1907, 22).

⁵⁹ See Brandt:

It looks as if morality has to operate on two levels, on one level being free to criticize and attack the institution of private property (marriage, etc.) – this is the level proper for reformers – and on another level being required to accept this institution as a going concern and to support principles regulating behavior on the assumption the institution is there – the morality for everyday life” (1992, 351).

hope to conclusively determine whether or not the institution in question is something that, taken as a whole, we ought to endorse, asking the question anyway has two points in its favor. The first and most important is the guard that is thereby provided against unwarranted conservatism. When an institution is highly consequential for human welfare, it is reasonable to worry that ignoring the moral case for and against its existence will massively skew one's conclusions about what it is morally appropriate to aim for, even at the margin.⁶⁰ Second, even if the answer to the question of whether or not a given basic institution ought to exist is unlikely to have any practical upshot (since there is little we can expect to do to eliminate or replace it, even if that were shown to be morally ideal), an answer to that question might nonetheless provide some benefit, by going some way towards "reconciling us to our social world" (Rawls 1999, 124-8). We might feel better about the profoundly consequential institutions that we are stuck with if we had a better idea of what might be said in favor of their existence.

2.3.1 How I learned to love the state system

The state system is, on any account, one of the highly consequential basic institutional arrangements referred to just now. I think that utilitarians need to consider, then, whether or not it is something that they can in good faith endorse. My view is that they can, for the following set of reasons.

1. *The global division of moral labor.* As Robert Goodin (1995) has emphasized, the state system plays a valuable role as an "administrative device" for the promotion of global welfare. Goodin points out that, as a general matter, the best way of ensuring that the interests of a group of people are protected or promoted is often to divide up that group of people into smaller sub-groups, each of which is assigned its own special agent or protector. This strategy is a way of reducing the strategic constraints on welfare promotion referred to in Chapter 1, insofar as it alleviates problems of information, collective action, and limits on altruistic motivation that might otherwise be pressing.⁶¹ Goodin suggests that we view the

⁶⁰ C.f. Martha Nussbaum's and Pogge's criticism of Rawls' theory of global distributive justice:

By assuming the fixity of states as his starting point ... Rawls has effectively prevented any serious consideration of economic inequalities and inequalities of power among states [and has seen to it that] [...] we do not get any interesting answer to the question why states might be thought to matter (Nussbaum 2006, 236).

[Rawls'] endorsement of this institution [the state] can have force...only if it has been subjected to moral examination (like other social institutions). Otherwise Rawls would be begging a crucial question, provided we allow, as reasonably we must at the outset, that justice may *fail to require* the states system in its present form (Pogge 1989, 258, italics in original).

⁶¹ This argument finds one of its classic statements in William Paley's *Principles of Moral and Political Philosophy*:

state system as an instance of this general type of case. From a utilitarian perspective, we can think of that system as involving a “global division of moral labor”. Given that we generally have better information about, greater capacity to affect, and stronger motivation to assist those nearest to us than those living far away, a system of special duties towards compatriots is a much more effective means of promoting aggregate global welfare than is a global philanthropic free-for-all.

2. *Specific goods.* While the above argument provides a significant component of the utilitarian justification for the state system, it only takes us part of the way. One of the reasons why this is so is that it fails to capture some of the specific reasons why the existence of independent political communities is so important to people. It is not just that the goods provided by a system of distributed responsibilities would be less efficiently secured in the absence of such a system. It is also that there exist some goods which can arguably *only* be provided in a world of relatively self-contained political communities of the kind we see in the world today. Among those goods are the following:

*Democracy.*⁶² Consider the following (non-exhaustive) list of preconditions for the meaningful exercise of democratic agency:

1. *Accountability:* Democracy requires that the representatives of the relevant demos be accountable to the members of that demos. This requires that the actions of the representatives in question satisfy transparency and publicity requirements, and that their decisions be guided in some reasonably direct and traceable way by the will of the people they represent.
2. *Identification:* If the members of a demos are to consider the decisions of a ruling body to be the expression of their own political autonomy, they must identify, in some broad sense, with the ruling body in question. They must not feel that decision-making is taking place at such a high remove, or in such a distant arena, that they have no genuine connection to its operations.

The good order and happiness of the world are better upholden whilst each man applies himself to his own concerns and the care of his own family...than if every man, from an excess of mistaken generosity, should leave his own business, to undertake his neighbour's, which he must always manage with less knowledge, conveniency, and success. (cited McMahan and McKim, 115).

See also Sidgwick 1907, 433-4.

⁶² I assume here that democracy is a good. It is the most successful arrangement we know of for securing the value of collective self-determination, a utilitarian argument for which is provided at 4.5.1 *infra*.

3. *Impact*: if individuals are to exercise political autonomy in a substantive sense, they must exercise it in relation to those aspects of their lives which are central and fundamental rather than merely trivial or peripheral.

It is plausible that these three conditions can only be jointly satisfied within the context of a system of distinct political communities of roughly the nature we find in the contemporary world. We can see this by means of a consideration of the alternative arenas in which democratic agency might be exercised. The possibility of fully meaningful democratic agency at the global level is arguably undermined by conditions 1 and 2. Even international bodies or institutions that fall far short of the scale implied by a global assembly (such as the UN General Assembly or the European Parliament) are plagued by charges of unaccountability, or of the preemption of decision-making by bureaucratic or technocratic elites. It would be both premature and pessimistic to think that global institutions cannot be made more democratic than they currently are. Presumably what is required is the development of new forms of governance, perhaps quite unlike those associated with the traditional state (c.f. Cohen and Sabel 2005). Nonetheless, I think it likely that considerations purely of scale will mean that whatever forms of global democracy we do manage to develop at the global level will not be able to provide the personal and immediate benefits in the form of political participation that are afforded by democracy at the level of the state. The third condition (impact) works in the opposite direction, to cast doubt on the adequacy of exercises of collective autonomy at levels of organization *below* the contemporary polity for securing the full measure of democratic agency. While one would not want to underplay the value of collective self-determination in such smaller-scale settings, the latter do not have the pervasive and long-lasting influence on the life prospects of individuals that renders political autonomy at more encompassing levels of association so significant.

Political community. For many, membership of (or “belonging” to) a political community is a good in itself, independently of the political and socioeconomic benefits - such as participation in self-government or social insurance schemes, access to public goods, and a framework in which to pursue economic opportunities - that such membership often brings. It is this idea that Rawls has in mind when he writes:

It is surely a good for individuals and associations to be attached to their particular culture and to take part in its common public and civic life. In this way belonging to a particular political society, and being at home in its civic and social world, gains expression and fulfillment. This is no small thing (1999, 111).

As Rawls continues, this fact “argues for preserving significant room for the idea of a people’s self-determination and for some kind of loose or confederative forms of a Society of Peoples” (1999, 111).

Cultural diversity. A world of relatively autonomous political communities such as we have at present provides a fertile environment for the fostering of diverse (national and other) cultures. This cultural diversity provides several important

benefits that a utilitarian ought to value. Not only are many individual cultures sources of delight and sustenance for the individuals enveloped in them, but the availability on the global plane of a diversity of ways of life enriches the set of options accessible to individuals generally, thereby increasing the scope of personal autonomy.

Institutional experimentation. The good of cultural diversity can be understood as partly a “system-level” consequence of the organization of the globe into relatively self-contained political communities, rather than a good internal to those communities themselves. A similar type of good is provided by the scope for large-scale institutional experimentation that such a form of global organization affords. Just as the states in a federal system of government provide a useful way of simultaneously trying out alternative institutional structures, the existence of a variety of distinct political communities within a global state system results in a much richer understanding of the scope of institutional possibility, and of the merits of specific social, economic and political policies, than would be available in a more unitary system.

3. The moral weight of the status quo. The above arguments together suggest that utilitarianism supports a global institutional set-up involving a plurality of discrete populations, each governed by its own unique set of political institutions. They do not, however, show that the political institutions in question should take the form of the modern state in particular (understood, roughly, as “a particular form of political and economic organization centering around governments that have eminent domain in a demarcated territory, control overwhelming force within it, and interpret and enforce international law beyond its borders” (Pogge 1989, 257)). A full moral justification for the existence of every aspect of the state system *per se* would take us far afield. We can however take a shortcut, by means of the following two points. One, the modern state system does in fact fulfill the desiderata given just now. Two, given that that system is now in place, it is very difficult to imagine a shift to an alternative system that also fulfilled those desiderata resulting in a net improvement in global welfare. If we had come to settle on another arrangement, it might well be the case that that alternative would have served us just as well or better. But given that the world is now structured as it is, it is likely to be exceedingly difficult to switch to that alternative in a costless fashion. If aiming to institute such an alternative were to be justified, we would at least have to have a *very* good reason for thinking that what could only amount to a radical global revolution would generate a significant improvement in human welfare. At present it seems safe to say that we have no idea as to whether or not this would be the case.

None of the above arguments should be taken to imply that everything about the state system, as we know it today, is morally optimal. Although the citizens of contemporary developed countries are generally, and on balance, well served by their states, the majority of the world’s population lives in states whose record is considerably more qualified than this. Even the “good” states have a number of significant vices that the above discussion does not canvass. And there are

several features of the system taken as a whole that are highly problematic (including its encouragement of nasty forms of nationalism, and the threat that it poses of apocalyptic war). These points, however, are not arguments for dismantling the state system, but rather for reforming it in a more healthy direction.⁶³ The general endorsement given here should not be taken to rule out, for instance, reforms in such current norms as the unlimited power of states to exclude foreigners from their territories, and the exclusive right of states to the resources found within those territories. Reforms in these areas might place limits on state sovereignty comparable in extent to those we have seen recently in the area of international human rights protection. The current suggestion is only the modest, though important, one that the basic system of dividing the world's population into territorially based communities, organized under a state and charged with special responsibility for the welfare of their own members, is (now) an essential part of the best strategy for maximizing global welfare. From a utilitarian perspective, this implies that the existence of that system is morally justified.⁶⁴

2.4 Upshots

Having at hand a moral justification for the state system, I now want to suggest, helps to structure utilitarian thought on global distributive justice in two helpful ways. The first is that it provides a respectable utilitarian justification for the division of questions of distributive justice into "global" and "domestic" categories. The discussion in Chapter 1, along with many discussion of domestic distributive justice, left unanswered the question of why we should think of matters of justice in such terms at all. For all that had been said at that point, it might well have been a mistake to pay any attention, when formulating fundamental principles of justice, to the current division of the world into independent political communities. That move now, however, looks like a perfectly legitimate one. If they are to do their delegated moral task in a successful manner, individual political communities will need to be held to secondary principles concerning the way in which their basic institutions distribute advantages. But it also makes sense from a utilitarian perspective to posit principles of global justice to which those communities can be held. Contemporary states are impressive producers of resources and highly effective coordinators of action. As a result, they have the potential to enhance the welfare

⁶³ Schell suggests that the nuclear threat requires a wholesale reform of the state system: "On the one side stand human life and the terrestrial creation. On the other side stands a particular organization of human life, the system of sovereign, independent states" (1982, 218). I doubt it.

⁶⁴ A useful, if heavy-handed, way to underscore the preceding arguments is to contrast the state system with one extreme, highly unattractive alternative. This is the dreaded "world state": a global authority with analogs of the executive, legislative and judicial functions of the contemporary state, and comparable powers of taxation, redistribution, and enforcement. Practically, it is hard to see how, without some radical changes in quite basic features of the human natural and social condition, the functions and powers listed just now could be performed on a fully global scale. And even if the practical obstacles could be surmounted, it is hard to disagree with Kant's (1795) claim that a world state could only be a global tyranny.

not only of those within their borders but also of those without, and principles of global distributive justice are needed to guide them in performing this task.

The second way in which the moral case for the state system helps to structure utilitarian thinking about global distributive justice is that it lays down certain basic parameters within which to work when constructing one's global principles. In an ocean as vast as this it helps to have some flags to swim between. The story about the state system told above provides those flags, by placing limits on the shape that principles of global distributive justice can properly take. Those principles, first, cannot make as extensive demands on us as domestic principles do, if they are not to undermine the specialized focus on sub-sets of the world's population that constitutes the core of the "global division of moral labor". Citizens must be permitted – in fact, required - to give priority through their institutions to co-citizens in certain resource allocations if the many benefits of membership in a political community are to be secured and sustained. But, second, co-citizen priority cannot plausibly be permitted to extend to the point at which the interests of non-citizens are accorded no weight at all. In today's world, an extreme view of the latter kind could only be justified on the basis of a position that accorded state borders something other than purely instrumental significance, which the story told above did not do. Instead, principles of global distributive justice will need to fall within the bounds supplied by these two extremes. Spelling out this intermediate terrain will be the goal of Chapters 4-6.

Chapter 3. The Competition

3.1 Introduction

The aim of the previous two chapters has been to set up some basic elements of a utilitarian framework for theorizing about global distributive justice. Before developing that framework in more detail, it will be useful to pause to introduce some of the more prominent competing approaches to global distributive justice that are present in the philosophical literature. The first half of this chapter provides a selective survey of the theoretical landscape in the area, with the twin aims of clarifying the distinctive basic commitments of the utilitarian position that I favor, and of laying out some points of reference for the later discussion. The second half highlights some of the more significant concerns that I have regarding the adequacy of the competing theories that I have discussed, and points out some respects in which the approach to be developed in the following chapters promises to have the upper hand.

3.2 The associative conception

In choosing which theories to focus on here, I have been selective in the following two ways. I have restricted myself, first, to those accounts that present the distribution of resources across societies as a matter of global political morality, generating substantive moral obligations⁶⁵, and, second, to those such accounts that I consider to pose the most serious challenge to my own approach. The latter are those theories that are both a) possessed of considerable *prima facie* appeal, and b) in strong disagreement with the utilitarian position. This process of double filtering has led me to three accounts in particular: Nagel's "political conception", Pogge's "institutionalist" approach, and Rawls' "political constructivism".

While each of these accounts is distinct from the others in important ways, all three are variants of a general position concerning duties of justice that Julius (2005) terms "the associative conception". To see what that position involves, as a general matter, consider the following set of fundamental questions that a complete theory of justice needs to address:

1. *Concept*: What is the content of the concept of justice? What role do principles of justice play within a moral theory?
2. *Ground*: What feature (or set of features) is it that makes it the case that a person (or group of persons) has a duty of justice to another person (or group of persons)? What puts people into the "justice relation"? (Julius 2005, 176.)

⁶⁵ This restriction rules out libertarian accounts such as Kukathas (2006), as well as those offered by proponents of the "realist" school of international relations (Waltz 1979, *et al.*). I find it so overwhelmingly plausible that obligations of this sort do exist in some form, that I find it very hard to take theories that deny such a claim seriously.

3. *Scope*: Which people (or sets of people) are in the justice relation thus identified?

4. *Content*: What does justice require, as a substantive matter?

The associative conception provides an answer to the second of these questions: the feature that unites each of its diverse variants is a distinctive thesis concerning the ground of justice. That thesis is the claim that questions of justice arise in the context of certain forms of association or interaction amongst persons. Duties of justice are “associative duties”, deriving “from shared membership in a group or participation in a personal relationship” (Scheffler 2001, 50). We can distinguish two forms of the associative conception, one strong and one weak. According to the strong version, all duties of justice depend on special relationships for their application. According to the weak version, at least some duties of justice do not so depend. The three accounts that I discuss below are all strong variants of the associative conception. In outlining each, I will briefly describe the specific ground of justice selected by the theory, the justification given for selecting that ground, and the implications of these for global distributive justice.

3.2.1 Nagel’s “political conception”

The form of association that Thomas Nagel regards as the ground of justice is *co-citizenship*, as constituted by the following special kind of political relation: that of being co-subject to, and co-author of, coercively backed law. One is subject to a law if one can be legally coerced to comply with it. One is the author of a law if that law is made “in one’s name” (or if, as Nagel likes to put it, one’s “will is implicated” in that law). The morally significant relation that holds between me and my co-citizen is the complex fact that we are both jointly coerced by our state’s laws and, at least in principle, jointly author the laws which do the coercing. In Nagel’s strong version of the associative conception, it is this complex fact that uniquely gives rise to duties of justice.

Nagel’s argument for co-citizenship as the ground of justice goes, in brisk summary, as follows. One ought not to be coerced to comply with a law unless one can reasonably be understood to have authorized that law.⁶⁶ If such authorization is to occur in regard to any given law, the reasoning on which that law is based must be consistent with an acknowledgement of each of its co-

⁶⁶ This principle has long been a theme in Nagel’s work, and is well expressed in his (1991):

The pure ideal of political legitimacy is that the use of state power should be capable of being *authorized* by each citizen - not in direct detail but through acceptance of the principles, institutions and procedures which determine how that power will be used. This requires the possibility of unanimous agreement at some sufficiently high level, for if there are citizens who can legitimately object to the way state power is used against them or in their name, the state is not legitimate. (8)

authors as equals.⁶⁷ Laws that do not pass this authorization requirement are illegitimate, as is the government that enforces them. Equal treatment of co-citizens, as specified by liberal egalitarian principles of justice, is thus the price paid for legitimate governance.

Nagel argues that, despite increasing levels of global economic and political interdependence in recent decades, the complex relation of co-subjection and co-authorship holds only within the setting of the state. He concludes from this that duties of justice do not extend either between individual states, or across the global domain as a whole. Nagel acknowledges that we have a strong positive duty to relieve the suffering of, and a strong negative duty to respect the “pre-political” human rights of, those who live in states other than our own, but he views such duties as requirements of “humanity” rather than of justice. Not only egalitarian justice, but justice period, is an exclusively intra-state affair.

3.2.2 Pogge’s “institutional” approach

According to Thomas Pogge, it is the relation of *co-entanglement in an institutional scheme* that puts two or more people into the justice relation. By “institutional scheme” Pogge has in mind something like the Rawlsian “basic structure”, viz. “the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation” (Rawls 1971, 6). Pogge interprets “social institutions” in this passage roughly as Robert Goodin defines them, viz. as “organized patterns of socially constructed norms and roles, and socially prescribed behaviors expected of occupants of those roles, which are created and re-created over time” (Goodin 1996, 19). Pogge argues that any “comprehensive and reasonably self-contained system of social interaction” (1989, 21) incorporates an institutional scheme or basic structure of this kind. In his view, it is the joint involvement of two or more persons in such a scheme or structure that uniquely sets the stage for questions of justice.

The question of why institutional schemes should have this special connection to justice can be subdivided into two. One: why should institutional schemes generate special moral duties? Two: why should the latter duties be ones of justice in particular? Pogge’s answer to the first of these questions is based on

⁶⁷ In understanding this idea, it is important to keep in mind that the type of authorization that Nagel is after is idealized rather than actual in nature. Many people quite happily endorse laws based on unequal consideration. What Nagel will say in such cases is that, while persons *can* give their heartfelt support to an unequal law, in doing so they are (morally) mistaken. Thus:

This does not mean that we are not justified in taking political steps which substantial numbers of people will be unable to accept...But the idea in such cases is that when we come through to the other side of the transformation, perhaps only after a generation or two, the resulting arrangement will command the acceptance, out of a mixture of impartial and personal motives, of a much wider range of persons than the old arrangement did – that it will prove a viable and superior form of collective life. (1991, 26)

two claims, one positive, one normative. The positive claim points to the consequential effects of social institutions on the lives of individuals. Such institutions “embody, preserve, and impart differential power resources with respect to different individuals and groups” (Goodin 1996, 20), often with far-reaching consequences for the lives of the latter. The normative claim with which this positive claim is paired is the familiar moral principle that we have a negative duty not to harm others. In particular, if we can help it, we ought to neither contribute to, nor benefit from, burdens suffered by those others. What do these two claims together suggest? Through our involvement in institutions we characteristically both contribute to and benefit from burdens imposed on others. Moreover, the institutions in question are not fixed features of the natural order, but human constructions, which might be otherwise: there are accessible alternatives, within our collective power to select, that would have different distributive consequences. If our participation in such institutions is to be morally acceptable, judged against the no-harm principle, we need to ensure that the institutional scheme that we have selected satisfies certain special conditions concerning the distribution of advantages. Why are these special conditions spelled out in principles of justice in particular? For Pogge, this seems to be purely a matter of definition. The subject-matter of justice just is “the moral assessment and justification of social institutions”, that of morality “the assessment of conduct and character” (1989, 17). Presumably Pogge takes this distinction to reflect ordinary moral judgments in this area.

What does the above story imply regarding global distributive justice? Pogge considers the form of association that he selects as the ground of justice to exist at the global level. The world as a whole (now) represents a “comprehensive and reasonably self-contained system of social interaction” (1989, 21). There exist institutions at the global level – such as the global economy and the body of international law – that have profound effects on people’s lives.⁶⁸ Moreover, those profound effects are a consequence of human action: “a global institutional scheme is imposed by all of us on each of us” (1989, 276). It follows from Pogge’s approach that duties of justice therefore extend globally. Moreover, the duties in question are, on Pogge’s view, strongly egalitarian. Pogge holds that the same argument that Rawls develops for domestic egalitarianism can be directly transposed to the global context, where the difference principle likewise properly reigns: “[W]e can justify our global institutional order only if we can show that the institutional inequalities it produces tend to optimize (against the backdrop of feasible alternative global regimes) the worst social position” (1989, 247).⁶⁹

⁶⁸ See e.g. Pogge 1989, 274:

Accounting for the prevailing rates of malnutrition and infant mortality requires [...] reference to how the existing global economic scheme assigns eminent domain over natural assets and how it regulates international cooperation through unconstrained market mechanisms...our global framework of basic institutions figures prominently in the true macroexplanations of morally significant phenomena [...]

⁶⁹ Pogge interprets the argument in the domestic case as going roughly as follows. Given that no person has a justified claim to special treatment in regard to the design of the basic structure of

3.2.3 Rawls' "political constructivism"

Rawls defends the strong version of the associative conception, writing that there are certain "relations of individuals to one another which set the stage for questions of justice" (1971, 130). Nonetheless, Rawls differs from Nagel and Pogge, who are with him thus far, in an important respect. Both Nagel and Pogge are monists about justice: they consider a single type of relation to ground all duties of justice. Rawls, in contrast, is a pluralist about justice, and that in two ways. He holds that forms of association which are intuitively quite distinct can each give rise to principles of justice (call this "relational pluralism") And he is also a pluralist concerning principles of justice themselves (call that "principle pluralism"). According to Rawls, different kinds of justice-generative relations call for different principles. In order to be just or fair, the rules that regulate different forms of association do not need to be the same. Instead, they need to be sensitive in each case to the particular nature of the form of association at issue. As Rawls puts the point, "the correct regulative principle for anything depends on the nature of that thing" (1971, 25).

There is, then, for Rawls, no single ground of justice. Instead there are several grounds, in the form of different types of association. Within domestic political communities, one salient such relation is citizenship, which is a form of "social cooperation", in Rawls' special understanding of that notion. It involves ongoing voluntary interaction amongst free and equal persons (each of whom is assumed to be motivated to cooperate by an idea of his or her good), regulated in accordance with mutually recognized norms of reciprocity and fairness. Rawls famously argues that the principles of justice appropriate for regulating social cooperation of this kind are strongly egalitarian in nature.

As we saw above, Pogge presents his account of global distributive justice as a logical extension of Rawls' conception of domestic justice to the global domain. He portrays his theory as "leav[ing] intact Rawls's whole argument for the two principles, directing it however at our entire social world...the world at large" (1989, 247). Rawls himself, however, resists the extension. Like Nagel, Rawls argues that the principles of justice that apply within a single society do not apply at the global level, because those principles are tailored to the special nature of domestic political relations. In particular, social cooperation, in the special Rawlsian sense, does not hold at the global level, since it is (under modern conditions at least) dependent upon the existence of governments and complex legal systems (see Freeman 2006). In contrast to Nagel, however, Rawls claims that the relations between distinct societies are nonetheless regulated by *other* principles of justice.

society, there ought to be a presumption of equality in the way persons are treated within or by that system. This presumption should, however, be overridden if inequalities of certain kinds would render the position of the worst off more acceptable, as compared to the available alternative schemes.

On the associative approach, if we are to decide which principles of justice hold at the global level, we need to identify the morally salient form (or forms) of association that exist at that level. Rawls argues that the relevant global relation is one not between individual persons, as in the domestic case, but rather between “peoples”. According to the thesis of principle pluralism, the content of the principles of justice that hold between such peoples is determined by the moral nature of the relation that those principles regulate. Rawls presents peoples as having a fundamental interest in political autonomy, and in having their equal status with other peoples respected. They are assumed to not be interested in their economic position relative to that of other peoples, and (in the ideal case, where the material and other conditions necessary for political autonomy are assured for all peoples) that relative position is assumed to not impact upon their other interests. In Rawls’s view, then, this form of association does not call for distributive egalitarianism. It does, however call for some degree of global redistribution. The aim of the Law of Peoples is to bring all peoples into what Rawls terms “the Society of well-ordered Peoples”, the set comprising those peoples that have either a liberal or a “decent” regime. If this goal is to be achieved, existing members of such a Society will need to assist “burdened societies” in realizing and preserving just (or decent) institutions and thereby assuring the essentials of their political autonomy. This duty of assistance will very likely involve some degree of resource transfer from existing liberal and decent peoples.⁷⁰

3.3 Utilitarianism vs. the competition

The above brief survey has presented us with an array of variants on the associative theme. Despite their sometimes profound differences on other matters, each traces the ground of justice to one or more types of human relationship. This is an attractive idea, with a long and distinguished lineage in moral and political philosophy.⁷¹ What sort of competition does it face? Julius contrasts the associative conception with another position on the ground of justice that he terms the “allocative conception”. According to the latter, principles of justice concern the morally appropriate response to “allocation problems”, understood as “situations in which a person can choose among several allocations of good things” (2005, 176). Such problems arise “whenever you notice the possibility of adding to or subtracting from people’s holdings of goods” (177). On this conception, in contrast to the associative conception, the nature of the past and present relationships between individuals makes no

⁷⁰ “Outlaw” states will also need to be integrated, although this will presumably be done in another way, if at all. The duty of assistance is not the only principle of global justice posited by Rawls. Others are listed at 1999, 37, and are similar, as Rawls notes, to the traditional norms of the law of nations.

⁷¹ Kant and Rawls sign on of course, but also, arguably, Hume. See:

Suppose, that several distinct societies maintain a kind of intercourse for mutual convenience and advantage, the boundaries of justice still grow larger, in proportion to largeness of men’s view, and the force of their mutual connexions (Hume, *Enquiry* III. Part 1)

fundamental contribution to the explanation of why and how duties of justice hold between those individuals.⁷²

Julius presumably regards utilitarianism as the paradigmatic variant of the allocative conception of justice.⁷³ I find that diagnosis misleading. In order to show why, I now want to return to my own favored approach to justice, as outlined in the previous chapters. I will approach it in the same way that I approached the three competing accounts described above, offering a discussion of the ground of justice that it selects, and of the broad implications that this selection has for the possibility of global distributive justice.

3.3.1 The utilitarian ground of distributive justice

As we have seen, “strong” versions of the associative conception construe all duties of justice as dependent on the presence of associative relations of a certain kind between individuals. On such accounts, we can be under no duties of justice towards those with whom we are not associated in the way selected as relevant. It is hard to see how a utilitarian could be tempted by this view. If we understand principles of distributive justice as heuristics for the maximization of aggregate welfare, a restriction of this kind on their ground would need a fairly solid argument, and it is not clear what could be said from a utilitarian perspective in support of one.

Its rejection of the strong associative conception does not seem to me to be one of the famed special quirks of utilitarianism. In fact, I think that many non-utilitarians should not be tempted by that conception either, at least if they are out to accommodate the bulk of everyday talk about justice. This is because the strong associative conception conflicts with what I take to be two commonplace ideas in the latter. The first is the idea that the question of who is admitted into a given association is sometimes itself a question of justice. This idea is especially compelling when inclusion within the association in question is correlated with access to a range of valuable resources or opportunities that are unavailable to those excluded. Some concerns about unjust exclusion may arise only in cases where those excluded nonetheless share some other more encompassing form of association with those doing the excluding. But this does not seem to always be

⁷² Julius appears to be drawing here on a passage in *A Theory of Justice* where Rawls writes:

[A]llocative justice applies when a given collection of goods is to be divided among definite individuals with known desires and needs. The collection to be allotted is not the product of these individuals, nor do they stand in any existing cooperative relations. Since there are no prior claims on the things to be distributed, it is natural to share them out according to desires and needs, or even to maximize the net balance of satisfaction... (1971, 77).

⁷³ Julius does not say so explicitly, claiming only that “every familiar view of egalitarian distributive justice falls under one of these heads” (2005, 2). However utilitarianism is pretty clearly the prime candidate. Such an interpretation would have a key parallel in Rawls, who writes, following on from the above passage: “Suitably generalized, the allocative conception leads to the classical utilitarian view” (1971, 77).

so.⁷⁴ Second, many people think it not only wrong but also unjust to violate human rights. Human rights, however, are standardly taken to apply to persons *as* persons, independently of any associative relations that their bearers may (or may not) have entered into with others.⁷⁵ Neither of these everyday ideas can be sustained within the framework of the strong associative conception.

In order to accommodate the above points, I suggest that any plausible version of the associative conception will have to be a “weak” variant. Justice will need to be understood as partly associative, partly non-associative in nature. Moreover, as I now want to argue, this weak conception is associated with three features that a utilitarian theory of justice both can and ought to take on. The first of these features is the claim that *some types of duties of justice* can arise only within an associative context. I argue in Chapter 5 that duties of justice based on considerations of fairness are of this type. The second feature is the claim that *certain forms of association* will generate duties of justice that apply exclusively amongst participants in the form of association in question. It makes excellent sense within an indirect version of utilitarianism to posit a set of duties of justice that are tailored to a specific kind of interaction or set of institutions, and which do not extend to those who are uninvolved (see 2.4 *supra*). The third feature is the idea that questions of justice are often especially *salient* amongst individuals who are socially connected in some special way or another.

The utilitarian-friendly nature of the second and third of these features can be underscored in the following way. Association is reliably correlated with a) increased vulnerability to the actions of others, and b) increased capacity to promote the welfare of those others. When, in the course of institutional interaction or socioeconomic cooperation, we “direct other people to serve [our] purposes” (Julius 2005), or assume the cooperation of others in the course of conducting our activities (O’Neill 2000, 192-7), or find ourselves entwined in “social structural processes” which encompass thousands of other agents (Young 2006), we render ourselves more vulnerable to others, and those others more vulnerable to us, than we would have if we had kept to ourselves. Fortunately, if increased associative ties heighten our capacity to harm people, they also heighten our capacity to assist them, insofar as the strategic constraints on

⁷⁴ Something like this concern is at work in the following passage in Brian Barry (which he presents as a criticism of Rawls’ *Theory*):

The notion that claims of justice can arise only among those engaging in a co-operative enterprise puts things backwards. Before cooperation can occur, distributive questions must have already been answered about rights over land, resources and other advantages that would-be cooperators did not themselves create....an answer must be given to these distributive questions, and that answer will establish a global distribution of some kind among countries that need have no co-operative relations at all. (1989, 423).

⁷⁵ Buchanan claims that “we have obligations of justice toward all other persons whether we interact with them or not” (2004, 96) on these grounds, writing that “the intuition that I ought to do something to help ensure that your basic human rights are protected [does] not depend upon any assumption that you and I are interacting cooperatively...It depend[s] only on a proper recognition of what I owe you as a person” (*ibid.*, 89).

promoting their welfare referred to in Chapter 1 are (at least somewhat) lessened. The better we know others, the more familiar we are with their circumstances, and the more we share their interests as a result of cooperative activity, the less epistemic, practical, social, cultural and motivational barriers there are to increasing their wellbeing. I suggest that it should hardly be surprising, given these facts, both that special moral duties should plausibly arise in the course of associative interaction, and that those duties should seem especially consequential and salient.

I propose, then, that utilitarians can agree with Julius, contra the allocative approach, that the “strong and unusual demands of distributive justice” cannot be accounted for exclusively by means of a general reference to allocation problems (Julius 2005, 4), and that *some* distributive justice principles do not “apply generically to situations in which people can affect the distribution of goods over groups of people” (Julius 2003, 344). This is both because some specific kinds of justice require association, and because some forms of association require specific principles of justice.⁷⁶

If utilitarians opt for a weak variant of the associative conception, as I think they should, which sorts of principles of distributive justice might be available to them in the global domain? Several types of candidate present themselves. One is a genuinely global distributive principle, premised on the existence of a justice-generative form of association that encompasses the entire population of the world. Another is a principle of distributive justice that applies to a smaller set of people than the global population as a whole. Such a principle would arise if forms of association that are plausibly justice-generative cross some but not all borders. Third, there might be duties of global distributive justice that hold in the absence of any form of associative relation at all between duty-bearer and claim-bearer. I consider each of these possibilities in Chapters 4 and 5.

3.3.2 A better place to draw a line

The above interpretation of the ground of justice within utilitarianism suggests that the associative *vs.* allocative distinction is not as helpful as Julius implies. No-one that I can think of holds the allocative view: certainly not the most plausible, indirect version of utilitarianism. Nonetheless, there does seem to be some significant distinction in the neighborhood between the way in which utilitarians and the other associative approaches discussed above conceive of justice. Where is the better place to draw it?

⁷⁶ It might be objected here that while we may have non-associative duties regarding the distribution of resources, it is inappropriate to speak of those duties as duties of justice (rather than, say, “duties of humanity”). I find it natural to think of both non-associative and associative duties regarding the distribution of resources as duties of distributive justice, but nothing much hangs on the terminology *per se*. Others who prefer to make the above distinction are welcome to it (though see fn 83 *infra*). What I am more eager to press here is the point that it is within the power of utilitarians to acknowledge the special significance of association to many questions of distributive justice.

We can understand the key distinction between the utilitarian and the other approaches discussed above as reducing to a disagreement not over the ground of justice – over what it is that puts people into “the justice relation” – but rather over the source of the moral authority of duties of justice. The utilitarian position on the latter is distinctive in two ways. One, utilitarians trace the moral authority of duties of justice to a *single* fundamental moral duty. And, two, they consider that single duty to be *teleological* in nature: it directs us to promote good states of affairs.⁷⁷ The competing approaches discussed earlier deny one or both of these two claims: they derive duties of justice from a moral theory that is fundamentally pluralistic and/or non-teleological.

On this interpretation, the disagreement between utilitarians and the competition on matters of justice is located at a further remove than Julius suggests. That disagreement is no small one. But it takes place at such a deep level that it should be no surprise that it tends to peter out before we reach (what are for utilitarians) the higher levels of moral theorizing. While utilitarians and their opponents may differ on fundamental matters of morality, then, they may exhibit considerable convergence on matters of justice. The following chapters will demonstrate some of this convergence in relation to the competing accounts discussed above. Utilitarians can agree with Nagel, Rawls and Pogge that a) the extent of duties of distributive justice increases in proportion to the strength of various connections between individuals; b) that at least some duties of justice apply exclusively amongst the members of bounded political communities (or peoples); c) that (Pogge excepted) egalitarianism is often at least *more* of a concern within rather than without such communities; and d) that we have strong duties to halt the suffering and deprivations of the global poor. The key locus of disagreement concerns not these conclusions but rather the best manner of reaching them.

3.4. Problems with the competition

It is my view that the utilitarian way of arguing for (among others) the theses listed just now is more appealing and compelling than the alternatives. Chapters 4 to 6 will attempt to support this view. In the remainder of the current chapter, I want to prepare the ground for that upcoming task by going on the offensive. In what follows I provide a brief survey of some of the more serious problems faced by the competing theories that I have introduced. None of the criticisms that I will make of those theories constitutes a knockdown argument; something of that nature would require more discussion of each than I have room for here.

⁷⁷ An important feature of the utilitarian account of justice is the derivative nature that it attributes to the latter. While some duties of justice require association, the normative authority of those duties can be explained on the basis of fundamental principles of morality that make no essential reference to associative relations. By itself, however, this feature is not enough to distinguish utilitarianism from the competing approaches discussed above. As I presented Pogge's view, justice is likewise derivative: it derives from a fundamental moral duty not to cause harm, applied within an institutional context. Similarly, Kant (to whom both Nagel and Rawls owe a considerable debt) treats special duties as derivative from a more general moral requirement.

However, together they do, I think, point to sufficiently serious problems to render the search for an alternative approach attractive.

3.4.1 Nagel

Nagel argues that the complex relation of co-subjection to and co-authorship of coercive law is, first, the ground of justice, and, second, holds only within the setting of the state. In assessing the argument for the first of these claims, it will help to underscore more explicitly its Kantian motivation. Underlying Nagel's crucial requirement that all laws be capable of "authorization" by those subject to and author of them is an ideal of negative autonomy: an ideal of not being forced to live in ways contrary to one's more important goals and moral commitments. The law poses a threat to this autonomy, not merely because it is imposed upon one, but also, and perhaps even more significantly, because it is presented to one as an obligation: a normative demand to which one is expected to bend one's will. If a given law is not to violate one's autonomy, it must be shown to have been in some sense "self-willed". This means that the law in question must be given a special justification, in the form of the provision of reasons for the imposition of that law which those obliged to comply with it can reasonably be expected to accept.

Here is not the place to take on Kantian contractualism in detail. I will simply register here that I am unmoved both by the problem that Nagel fixes upon and by egalitarian justice as a solution to it. I am unpersuaded, that is, that coercive law in which one's "will is implicated" poses a special, unique form of justificatory demand that is absent otherwise. And I am also unpersuaded that our commitment to egalitarian justice is best accounted for as a response to this allegedly special problem. In my view, there is both a more straightforward and a more appealing way of explaining why principles of justice apply within the context of a political community than by appeal to concerns about negative autonomy and legitimate governance. Our support for egalitarian public policy rightly springs not (or at least not exclusively) from worries about the morally appropriate use of coercion, but rather from considerations concerning the effect that such policy has on the wellbeing of those whom it affects.⁷⁸

Because this disagreement runs very deep, however, I will not pursue it here. Instead I will attempt to cast some doubt on Nagel's claim concerning the supervenience of justice on the joint fact of co-subjection and co-authorship, by briefly presenting two domestic cases in which co-authorship is arguably absent, but in which duties of justice – indeed, of egalitarian justice – nonetheless seem to apply. The first example is that of non-citizens resident in a state other than their

⁷⁸ We can in fact go further here. Not only does utilitarianism provide a better argument for domestic egalitarianism than Nagel's account, but it is doubtful that Nagel's account provides a robust argument for domestic egalitarianism at all. As James remarks, it is not clear from Nagel's paper why the legitimation of political authority calls for the full array of egalitarian measures, rather than purely for "familiar civil and political rights, seen as checks on the institutional abuse of [power]" (2006, 711).

own.⁷⁹ If the bounds of co-authorship were coterminous with the bounds of justice, we would have to say that a South African in Sweden, say, had no moral right to a fair trial there. We would also have to say that it was perfectly just for a Swedish employer to discriminate in hiring against that South African on grounds of his sexual orientation (but only, mind, up until the day on which he attains Swedish citizenship). The second example is provided by political communities in which a significant proportion, if not all, of those governed do not vote. Nagel would seem to have to deny, for instance, that – given that they were not even *putative* co-authors of the coercive laws to which they were subjected – women before the twentieth century, and African Americans in the antebellum South, were outside the bounds of justice. Nagel's account would also deprive us of the ability to claim that the act of denying such groups the vote was in any way itself a grievous injustice. These results are, to say the least, counter-intuitive.

Nagel would very likely try to deny that such cases are genuine counter-examples to his view. This is because, at one point at least, he implies that the notion of co-authorship is much more expansive in nature than those purported counter-examples suggest. Nagel's discussion of the question of whether or not the inhabitants of a state ruled by an occupying power can be said to co-author those laws suggests that all that is required for co-authorship of a law is *compliance* with that law, in response to a recognition of an expectation that one so comply. This seems to me to be stretching the notion of co-authorship to breaking point. It is certainly a long distance from Nagel's original introduction of the notion, according to which one co-authors a law if that law is made in one's name, and if one can be reasonably understood to have accepted the principles or considerations that underlie it. But, even if we grant Nagel this move, it poses a problem for his position as a whole, insofar as it opens the floodgates to diagnoses of co-authorship at the international level. It would seem to follow from this expansive understanding of co-authorship, for instance, that citizens of developing countries co-author the structural reforms imposed on their countries by the IMF as a condition of loans (c.f. Cohen and Sabel 2006). This, however, would contradict Nagel's claim that co-subjection to and co-authorship of coercive law is an exclusively intra-state phenomenon. Nagel cannot have it both ways: either his choice of the ground of justice, or his restriction of that ground to the state, has to go.

A final problem with Nagel's argument concerns not its premises, or the move from its premises to its conclusion, but rather that conclusion itself. As Cohen and Sabel emphasize (2006), it is not only the application at the global level of egalitarian norms, but of *any* norms above the humanitarian baseline that Nagel's argument denies. Thus, if, on Nagel's account, requirements of socio-economic justice fail to apply at the supra-state level, so too do requirements pertaining to political process, such as those concerning the fairness,

⁷⁹ Gerald Neuman is acknowledged for drawing attention to this case in Cohen and Sabel 2006, fn 27.

accountability, transparency or inclusiveness of international institutions. These are very difficult claims to swallow.

3.4.2 Pogge

Although I join Rawls in rejecting Pogge's "relational monism" – his choice of the single relation of institutional entanglement as the ground of all justice – I will reserve pressing that point for the following chapters. Instead I will focus here on three further problems that Pogge's account faces.

1. *Harm, what harm?* Pogge's argument for widespread duties of justice to aid the global poor depends on our being able to demonstrate that the average person, by virtue of her participation in the global basic structure, contributes to or benefits from burdens suffered by the global poor. This, however, turns out to be a hard case to make, for two reasons. First, the effects of current global institutional arrangements are so poorly understood that it is often unclear whether or not they – on balance, and as a whole – improve or worsen the situation of the worst off. Second, even if it were clear that worsening had occurred as a result of the global institutional scheme taken as a whole, the relationship of the average person to that worsening would be very difficult to convincingly demonstrate. The global political and economic order is so complex that it is generally impossible to trace the precise causal connection between one person's activities within it and the fact of another person's suffering harm. Together these facts render Pogge's argument that there exist extensive duties of global distributive justice quite vulnerable.

Those of us who think that we have moral duties to assist the world's destitute are much more confident of that conclusion than we are of the empirical theses that Pogge adduces to support it. This makes one suspect that our convictions derive from a different set of considerations. Note that while it is difficult to convincingly demonstrate individual responsibility for harming the global poor, as Pogge hopes to, it is perfectly easy to demonstrate both individual and collective responsibility for failing to prevent harm to them, and for failing to benefit them. My view is that duties of justice to assist the global poor can be argued for both more simply and more persuasively by pointing to the latter types of wrong. While we might also argue for them on the ground that Pogge highlights, such an argument should be at best supplementary.⁸⁰

⁸⁰ Why does Pogge disagree? He sometimes presents his focus on harm as a strategic move, deriving from his view that most people consider negative duties to be more compelling than positive duties. If this is so, an emphasis on the former will be more likely to convince one's audience of the urgency of alleviating global poverty. I am not persuaded of the merits of this strategy. This is in part because I suspect that one of the main reasons why many people are comparatively lukewarm about positive duties is that (rightly or wrongly) they consider those duties to be more taxing than negative duties, in particular by virtue of calling for resource outlays. But, in the end, resource outlays are precisely what Pogge's negative duties of global distributive justice are going to come to.

2. *Egalitarianism*. Pogge appears to think that, once he has demonstrated that principles of distributive justice hold at the global level, he has thereby demonstrated that principles of *egalitarian* distributive justice hold there.⁸¹ This assumption results in two problems. For one, the inference in question does not seem well motivated within Pogge's account. As we have seen, that account presents justice as fundamentally concerned with the prohibition of institutionally caused harm. But the connection between harming someone and not treating them equally is surely not tight. The second problem with Pogge's assumption that all principles of justice are egalitarian in nature is the resulting stark discontinuity in Pogge's account between the moral principles that apply within, and those that apply without, institutional schemes. Liam Murphy writes:

We are to imagine that a remote community not yet involved in any external trade or otherwise affected by global institutions would make no claims of justice on us, but that as soon as we begin to trade with them, thus including them in the world economy, something like the difference principle would suddenly govern our relations ... I find it incredible that the application of the ground rules of economic interaction could have this much moral significance (1998, 274)

If Pogge were to countenance principles of global or cross-border justice intermediate between humanitarianism and full-blown domestic-style egalitarianism, he would lessen this discontinuity, and with it the resistance that it invokes.

3. *Global-domestic conflict*. A third problem with Pogge's account (emphasized in Freeman 2006) is that it is unclear how the distinct principles of domestic and global distributive justice that Pogge advocates can both be implemented at once. Not only do Pogge's global and domestic difference principles aim at the maximization of different things, but, even more problematically, they compete to regulate some of the very same sets of institutions. The global institutional scheme described by Pogge encompasses each of the domestic institutional schemes. It follows that one cannot work on domestic distributions separately, and *then* move on to consider the global distribution – for the latter will already be substantially fixed by the time the first task is done (and *vice versa*). This problem arises because it is in the nature of domestic and global principles of justice to be aimed, not at distributing a fixed set of goods – a task which would allow for sequential application of the same or different distributive principles at inter-nested levels – but rather at setting the terms of basic social, political and economic institutions. As a result, we can only apply principles of justice “once”.

The best way to avoid a problem of this kind is to construct principles concerning global resource distribution that apply to institutions less capacious in reach than the global institutional scheme as a whole. The principles of global distributive justice that I advocate in the following chapters are of this nature. While the

⁸¹ The assumption in question is a symptom of “principle monism” about justice, and is shared by Nagel.

duties deriving from those principles may well come into some practical conflict with each other, or with duties deriving from principles of domestic justice, they will not generate the sort of fundamental conflict with the latter principles that Pogge's sweepingly comprehensive global principles threaten.

3.4.3 Rawls

1. *"Peoples"*. Rawls argues that the morally salient form of association at the global level is that between "peoples": politically organized communities sharing "common sympathies" and a reasonably broad conception of justice (1999, 23-5). This suggestion is problematic for three reasons. The first is that it is not clear that "peoples", in Rawls' special sense, actually exist. Rawls prefers the notion of a people to that of a state, because he wants to avoid invoking certain features commonly taken to be possessed by the latter, such as the right to wage war for national gain, and a right to unlimited discretion regarding internal affairs (1999, 25). But neither of these features seems essential to the very concept of the state. Much of what Rawls says about global justice would have made better sense if he had substituted "states" for "peoples", and simply distanced himself from the offending features in question (as I did in the previous chapter). The second problem with Rawls' choice of peoples as the subjects and objects of moral duties at the global level is its at least surface violation of normative individualism. Rawls often gives the impression of treating peoples as moral units in their own right (see Wenar 2002, 76, Nagel 2005, 135). It is doubtful that Rawls does in fact intend to do this; Freeman suggests, for instance, that Rawls' focus on peoples "is precisely the result of his concern for the freedom and equality of individuals, which is in the background throughout in *The Law of Peoples*" (2006, 65-6).⁸² But, whether or not this is so, the focus throughout on peoples rather than persons obscures rather than illuminates this point. The third problem with Rawls' exclusive focus on peoples is that it ignores entirely other morally salient forms of cross-border relation besides those that obtain between peoples *or* states (some of which I consider in Chapter 5). Rawls' relational pluralism suggests that he ought to be open to the existence of a variety of justice-generative forms of association in the realm of global politics; his failure to explore the other options is disappointing.

2. *The goal of global distributive principles*. For Rawls, the fundamental aim of the Law of Peoples, including the "duty of assistance", is the securing of the equal political autonomy of all peoples. I consider this approach misguided. Political autonomy (of individuals, rather than peoples) is properly an important goal of global distributive justice, but it is not best seen as the most central or the most fundamental such goal. While the approach to global distributive justice that I develop below preserves room for a considerable degree of collective self-determination, it construes the latter as instrumental to the broader and more basic goal of furthering global welfare.

⁸² The idea here is that justice among peoples ensures that individuals attain the essentials for political autonomous citizenship, the latter of which is a condition of personal freedom.

3. *Reasons for rejecting global egalitarianism.* The foregoing disagreement over the ultimate goal of global distributive principles translates into a disagreement over the right reasons for rejecting comprehensive global egalitarian principles. I join Rawls in being unpersuaded by the positive arguments for global egalitarianism that are offered by global “luck egalitarians” (e.g. Caney 2005, Tan 2004, Moellendorf 2002), or by cosmopolitan “institutionalists” such as Pogge and Charles Beitz. We differ, however, on the additional arguments that we take to tell against those principles. Rawls rejects comprehensive global egalitarianism primarily because he takes it to conflict with respect for the political autonomy of peoples (see 1999, 117-8). On my view, any such rejection will need to be based instead on a broader, welfarist rationale.

3.5 The upcoming terrain

Each of the approaches that I have discussed in this chapter represents a thoughtful and creative response to some important challenges in the construction of a theory of global distributive justice. I will suggest in what follows that my alternative utilitarian approach can capture much of what is appealing in these diverse accounts, without taking on their disadvantages. I think that my approach can accommodate the most central of our intuitions concerning global distributive justice: explaining why it is that our duties towards others appear to multiply or change in form the more our lives become intertwined, while nonetheless acknowledging that we have demanding duties – and duties of justice – towards those with whom we have no contact whatsoever. And it can do this in a way that is both comprehensive and persuasive.

The best way of showing this is to develop that approach in some detail, and to see it in action: the task taken on in the following chapters. Those chapters are organized around a distinction between three goals at which principles of utilitarian distributive justice might be directed. The first of these is the attainment by individuals of a minimally *decent* level of welfare, the second the treatment of individuals in accordance with norms of *fairness*, the third the obtaining of a certain degree of *equality* across individuals along certain dimensions (where this is valued for reasons independent of its contribution to decency or fairness). Chapters 4 and 5 will address each of these three goals in turn, in relation to the special case of global distributive justice. They will consider the extent to which there is a utilitarian case for these goals at the global level, and, if so, the form that the principles and duties arising from them should take.

Chapter 4. Decency

4.1 Introduction

This chapter addresses that part of global distributive justice that is concerned with what I will call *decency*: the attainment by individuals of a minimally decent level of wellbeing. Although, as the following chapter will show, this goal should not be taken to cover the full extent of the aims of utilitarian global distributive justice, it is clearly highly important. Much, if certainly not all, of what really bothers people, with or without utilitarian instincts, about the sorry state of the world is the sorry state of the majority of the people who live in it. Any theory of the ethics of global resource distribution therefore needs to provide a story about how precisely our global responsibilities in this area are to be understood. In the present chapter, for analytical purposes, I treat decency as our sole distributive concern at the global level, and drop that assumption only in the following chapters.

It is not difficult to show that the global achievement of decency should be a utilitarian priority. It is less obvious, however, precisely what form that goal ought to take at the global level, how exactly it is to relate to domestic decency requirements (such as the “maximizing” principle of domestic distributive justice argued for in Chapter 1), and how it is to be weighed up against other valuable utilitarian goals at the global level. Utilitarians, and their welfare consequentialist cousins, have not addressed such questions in the detail required if their position on global distributive justice is to be complete and convincing. My aim here is to fill some of this gap.

I begin by arguing for two distinct goals concerning global decency, which I call *Indirect Global Maximizing* and *Global Humanitarian Assistance* (or Goal 1 and Goal 2, for short). I then consider two objections to the goals that I advocate: first, the claim that there is little that states can do to promote them; second, the claim that promoting them is incompatible with two important values that we ought to respect. I argue that the first of these objections is, in the light of current evidence, overly pessimistic. I then argue that, while the second objection does not cast doubt on Goals 1 and 2 themselves, it does place limits on the ways in which they can permissibly be pursued. This leads me to go into some further detail concerning how the global decency goals that I argue for are to translate into specific duties on the part of individual states.

4.2 The utilitarian case for decency

There is widespread agreement, in both the philosophical literature and general moral opinion, on two points. First, that the failure of individuals to attain a minimally decent level of wellbeing, in at least many cases, grounds a moral responsibility on the part of others to rectify their situation. Second, that this responsibility holds not only in regard to those individuals with whom one

happens to be connected in some special way, but also in regard to individuals who are socially or spatially distant from one. There remains significant disagreement over such issues as: which moral considerations ground the responsibility in question; which factors (such as the role of individuals in contributing to their own state) undermine or negate it in a given instance; and whether or not it is properly considered a duty of justice or instead one of “humanity”.⁸³ But the sense that, in at least many central cases, something must be done about the circumstances of those who suffer hunger, poverty, preventable illness and other forms of absolute deprivation is a core and robust element in our moral thought.

There are a variety of ways of arguing on moral grounds for the securing of a minimally decent level of wellbeing for individuals. Enlightened libertarians, for instance, can argue that it is a condition of persons being able to exercise their basic negative rights that they and others not suffer certain forms of extreme want or suffering. Kantians can argue that the materially deprived are vulnerable to coercion or deception, the latter being affronts to one’s status as a free rational agent (O’Neill 2000, 140). But the utilitarian case for a decency goal is especially strong and clear: utilitarians are on home ground here, if anywhere.⁸⁴ The basic utilitarian line regarding decency is the same at the global level as it is at the domestic level (see 1.3.4. *supra*). For one, a situation in which many people experience less than minimally decent levels of welfare will generally be inefficient from a utilitarian perspective. Most people are capable of attaining decency, given the right conditions. And it is often not all that expensive to secure the conditions in question. It is inexpensive in terms of material resources: people’s basic needs can often be fulfilled with minimal amounts of those. And it is inexpensive in terms of more immaterial goods forgone: given that a decency goal is concerned with raising persons to only a minimal level of wellbeing, it does not threaten to undermine their autonomy in the way in which more generous goals might. Second, when people fail to attain a minimally decent level of welfare they are apt to reduce the welfare of others with whom they associate, as well as under-utilize their capacity to improve the welfare of others more distant in space and time. To put things in coldly calculating terms, all of this means that the big gains for utility maximization are often to be had down at the lower reaches of the wellbeing distribution. To put things in more

⁸³ I avoid the use of the term “humanity” here for two reasons. First, duties of humanity are generally associated in the literature with securing a fairly low level of welfare, such as that attained when a person possesses the basic biological necessities of life. I think of the level of decency as being pitched considerably higher, and incorporating a richer variety of concerns, than this. Second, while duties of humanity are generally understood in the literature to be distinct from duties of justice, I conceive of duties relating to decency as a subset of the latter. This is both because principles regarding decency fit the concept of distributive justice that I offered in Chapter 1, and because opposing duties of humanity or decency to duties of justice tends to give the impression that the former are morally less stringent than the latter. This impression is misleading if, as I think, duties of decency are among our most compelling.

⁸⁴ To be clear and fair, I should note that the utilitarian headstart in this area derives mainly from its welfarist component. This means that many other welfarist consequentialists are similarly advantaged where accommodating decency is concerned.

appealing terms: the elimination of distress and suffering, which is a considerable portion of the goal of decency, is also intuitively a considerable portion of the *raison d'être* of utilitarianism. We are utilitarians, if we are, in significant part because we see distress and suffering as of intrinsic disvalue, and morality as, in significant part, directed at getting rid of them. Indeed, it is the direct and forceful rationale that utilitarianism provides for moral duties in this area that affords one of its main attractions.⁸⁵ By comparison, the moral theories mentioned earlier are at a disadvantage, insofar as the intuitive force of their arguments in this domain is less immediate.⁸⁶

Although there is therefore good reason to think that utilitarians must, somehow, have this large corner of our global moral concerns nicely covered, its contours have not been mapped by utilitarians in any great detail. There is a voluminous literature on what welfare consequentialists should say about the individual moral duties of the global affluent towards those termed “the distant needy” (see e.g. Singer 1972, Unger 1992, Mulgan 2002, Murphy 2003). But little of any great precision has been written on what our collective goals should be in this area: what our duties as participants in large-scale institutions (especially, states) are. This - the terrain of global distributive justice – is my focus here.⁸⁷

4.3 Two goals

I argued in Chapter 2 against the idea that we can capture the “decency aspect” of global distributive justice by means of a direct transposition to the global level of the principle that I had earlier argued expresses the decency aspect of domestic distributive justice. Such transposition, I suggested, would result in the following principle:

Global Maximizing. The global basic structure ought to be set so as to maximize over time the number of people who possess an adequate amount of global standard goods.

To recap, I argued that this principle is unattractive by virtue of the difficulties involved in identifying an acceptable and workable list of global standard goods, making precise global interpersonal welfare comparisons on the basis of those goods, and constructing a satisfying unique schedule for weighing those goods up against each other, in cases where trade-offs are required. I also pointed to the

⁸⁵ Although also, admittedly, one of its main problems. The very strength of the utilitarian case for decency duties renders it prone to charges of excessive demandingness, and of being unable to accommodate moral concerns of a more refined nature. Section 4.4.2. below and chapters 5 and 6 will try to alleviate some prominent aspects of these worries.

⁸⁶ The claim that the reason that a person ought to feed me when I am starving is that my starvation places me in a state of unfreedom, or renders my negative rights insecure, has a distinct air of contortion. While it is no doubt true that my being half-dead due to malnourishment reduces my autonomy or liberty, that hardly seems to be the only, or indeed the most, morally salient fact of the situation.

⁸⁷ See 1.2.1 *supra* for the claim that distributive justice is primarily a collective rather than an individual matter.

difficulty, in regard to this principle, of identifying an agent capable of feasibly aiming for and securing its fulfillment. I suggested that, in place of *Global Maxifizing*, utilitarians ought to seek a principle that a) does not depend so heavily on constructing the list and schedule, or on making the comparisons, in question, and b) is better attuned to the capacities of real-world agents.

I now want to try to do this, within the terms established by the “global division of moral labor” between political communities defended in the second part of Chapter 2. The previous discussion suggests that, in doing this, we should both see how far we can get by reference solely to domestic rather than global standard goods, and incorporate explicit reference to political communities into the proposal. Because it is not immediately clear at the global level what the subject⁸⁸ or the agent of distributive justice ought to be, I will also begin by construing decency in terms of a goal (or goals) rather than a principle. Goals, by virtue of their outcome orientation, are more capable than principles of standing alone, without attachment to particular sets of institutions or agents. I will address the question of how the resulting goals are to translate into principles (in particular, duties on the part of states) in section 4.5 below.

One possibility is to opt for the following goal:

Universal Domestic Maxifizing. A world in which all political communities fulfill internally the maxifizing principle of domestic distributive justice advanced in chapter one.⁸⁹

This goal has the advantage, advocated above, of both incorporating explicit reference to existing political communities, and of providing a clear story about how domestic decency goals relate to global decency goals. It is, however, problematic in two respects. The first problem is that, as stated, it is silent on the issue of the moral propriety of the *status quo* distribution of resources across political communities. (This remains a live question, even once we have accepted the existence of states as morally justified; what is at issue is the way in which rights to resources are to be distributed across those states). A goal aimed at universal domestic maxifizing needs to specify whether or not the aim is for each community to maxifize, with the resources, material and otherwise, currently available to it taken as given (call that the *conservative* option), or whether

⁸⁸ I express doubts about the appropriateness of the “global basic structure” as the subject of global distributive justice at 5.5.1 *infra*.

⁸⁹ That principle was:

Maxifizing. The basic structure of a society ought to be set so as to maximize over time the number of that society’s members who possess an adequate amount of standard goods.

where an “adequate amount” is that amount normally necessary in the society in question if an individual is to attain a minimally decent level of welfare, subject to increase in the case of individuals with transparent limitations in basic capabilities.

communities are to maxifice, using those resources as well as, in some cases, some to-be-specified amount of the resources currently held by other communities (call that the *perhaps-radical* option). On the conservative option, any role for outsiders would be restricted at most to helping a foreign community determine what the various basic structures available to it were, and to assist it in using its existing resources to institute that which was most likely to result in the highest satisficing score over time. On the perhaps-radical option, outsiders might be required to provide some of their resources to the community in question, prior to or in conjunction with the above advisory tasks.

The second, more serious, problem is that neither of the two options listed just now seems satisfactory. A difficulty with the conservative option is that a conception of global distributive justice based upon it will have the result that it is perfectly just (at least where decency is concerned) if a country such as Bangladesh continues to have an alarmingly low satisficing score⁹⁰, provided that it is making the best of a bad situation. Another difficulty is that, if we consider the sort of technical/institutional assistance on the part of outsiders mentioned just now to itself be a resource, as seems appropriate, it looks like the conservative option, strictly interpreted, would construe such assistance as likewise not morally required, and it would be unclear what exactly it was that the responsibility to promote the above goal implied for outsiders. Intuitively, however, there is some such responsibility, and it does involve some degree of positive cross-border aid.

It looks, then, like we should prefer the perhaps-radical option. That would appear to require a two-step approach. First we would construct a principle concerning how many, and which, resources ought to be made available to each country, and *then* direct countries to maxifice using those resources. I take it that the first part of this strategy only needs stating for its hopelessness to be apparent, but it is worth briefly going through the specific reasons why.

1. It would be massively difficult to get the calculations concerning which country should get what right. We do not know enough about the determinants of economic growth in general, nor about the particular circumstances of, and possibilities available to, each country, to work out how many and which resources ought to be made available to each. We certainly cannot assume that an equal (per capita) distribution of global standard goods is required, for a reason akin to Sen's point about the divergent capacities of individuals to convert resources into welfare, here applied to countries rather than persons (where, in my view, the point has greater force).

⁹⁰ For brevity, I will be employing the following terminology from now on: to possess that amount of standard goods that is generally adequate for a person in one's society to attain decency is to "satisfice", and the percentage of a given population that satisfices is that population's "satisficing score".

2. What appeal this strategy has arguably derives from a naïve view about the determinants of economic development. As will be explained below, it is likely that some of the resources that are best placed to help the poorest performing countries to increase their satisficing scores are not material goods (like food or cash), which are relatively amenable to cross-border redistribution, but rather services, institutions, or norms. The latter are not so easy to transfer in a one-off, permanent fashion: the first, because services are tied to human beings, whose overseas transplantation raises both practical and moral difficulties; the second two because the capacity of foreigners to transfer these at all is in doubt.

3. A massive one-off redistribution of even the relatively easily transferable material goods is politically unimaginable. The idea of the world's nations agreeing to it is plainly utopian. And, even if it could be agreed upon as a goal, it is hard to see how, and by whom, it could realistically be implemented.

4. An immense global reallocation of resources, even if it could be effected in the face of the above practical difficulties, would be of dubious utilitarian value. Given the current state of governance and basic infrastructure in many developing countries, many of the resources in question would simply be wasted, due to limited "absorption capacity" or corruption. They could even have negative consequences for the receiving political community, by virtue of displacing local attempts at economic development with a greater long-term prospect of success, or by virtue of cementing the power of oppressive local elites (see section 4.4. *infra*).

5. The proposal under consideration is a starting-gate approach: we (whoever "we" refers to: see point 3.) divide up the goods between various countries in what looks at that point like a utility-maximizing way, and then let them get to it, accepting whatever results as morally legitimate as far as global distributive justice is concerned. But this strategy has the usual defect of an *ex ante* approach from a consequentialist perspective. A lot can occur between an initial distribution that is, within a certain limited time-frame, utility-maximizing and the results further down the line. Countries that started out "equally" (in some sense) might end up drastically unequal, due to mismanagement, unforeseen developments, or just plain bad luck.⁹¹ If, instead, to alleviate these problems, we opt for a starting-gate approach subject to periodic adjustments, we invite serious concerns about collective self-determination, incentives, and a dangerous concentration of power in whatever body was created to do the adjusting.

For the above reasons, it is misguided to try to work out some utility-maximizing initial distribution of the world's resources across political communities. But at the same time, it does not seem that leaving countries to make do with the

⁹¹ In some cases a starting-gate approach to distribution might be appropriate from a utilitarian perspective, in order to preserve autonomy or to encourage individual responsibility. But this does not seem to be one of those cases - largely, though not only, because too much is at stake.

resources that they happen to have (the conservative option) is a satisfactory alternative. I suggest the following goal instead:

Goal 1. Indirect Global Maxificing. A world in which all political communities ensure, sustainably, and in a way not dependent on external aid, that the large majority of their population satisfices.⁹²

The argument for this goal is straightforward: its achievement is required if the state system is to carry through effectively on the vision that the global division of moral labor argued for at 2.3.1 suggests. That vision is a situation in which each state actually does successfully and sustainably promote the wellbeing of its own citizens, rather than the present situation, in which numerous states fail miserably to do so. It is an evident improvement on the two variants of *Universal Domestic Maxificing* considered above, insofar as it neither presupposes a morally dubious and practically impossible massive reallocation of resources, nor rules out the possibility that significant international redistribution might be required (so that the complacent attitude to countries such as Bangladesh floated earlier is avoided).

However this goal shares a problem with the previous goal that I have not yet mentioned. *Indirect Global Maxificing* constitutes an ongoing, long-term project: one that can be attained only by degrees, if at all. If the millions of global poor are not to be left unassisted in the meantime, it will need to be supplemented by a second goal. I suggest this:

Goal 2. Global Humanitarian Assistance. Fulfillment on the part of outsiders of the basic needs of those whose own political community proves unable or unwilling to assist them (as in the case of natural disasters, civil war, or severe and systematic poverty).

Goal 2 differs from Goal 1 in two chief respects. First, it is directed solely at satisfying *basic* needs, which I here understand as the minimal biologically-determined requirements of life. The satisfaction of such needs can generally be secured by means of the same standard goods required to secure decency, but calls for only a subset of those goods - basic health care, nutrition, clothing and shelter - in smaller amounts and/or of lower quality. Second, Goal 2 calls for a *direct* response on the part of outsiders to the needs of insiders, whereas the involvement of outsiders is mediated in the case of the first goal, which is aimed at building the capacity of communities to promote decency within their own populations. These differences are related. The chief rationale for restricting the

⁹² I say "large majority", because the goal that *all* attain the relevant amount of goods is plausibly unachievable, due to factors beyond our capacity to address. The rationale for aid-independence derives from the value of collective self-determination, which I discuss below at 4.4.1.

goal of direct foreign provision to that of the satisfaction of basic needs is that the latter is much easier to secure from a distance than is full decency.⁹³

These goals need to be treated as a package, not only because each is insufficient on its own, but also because the single-minded pursuit of one may well subvert the achievement of the other. Taken together, as that package, I think that they are an attractive specification at the global level of that part of global distributive justice that is concerned with the attainment of decency. I also think, on the basis of the considerations mentioned in 4.2 *supra*, that utilitarianism provides a compelling case for the claim that we are morally required to promote them. The remainder of the chapter will address two important objections to these claims, the general thrust of which should be familiar from both the academic literature and general public debate. The first is the objection that outsiders cannot do much to actively promote Goals 1 and 2; the second is that promoting those goals will conflict with two important values that utilitarians, as well as others, ought to be concerned to protect.

4.4. The empirical question: Can outsiders help?

Much of the recent literature in economics and political science has been characterized by skepticism concerning the extent to which what I have been calling “global decency” can be effectively promoted by outside agents. If this skepticism were well founded, advocating those goals might be pointless, or perhaps even harmful, insofar as it diverted time, effort and material resources that might be more profitably spent elsewhere. Therefore, although the extent to which outsiders can promote decency is an empirical question, philosophers need to, at least in outline, consider it.

Where Goal 1 is concerned, many doubts of the kind just mentioned spring from a particular view about what it is that determines a country’s economic

⁹³ It is tempting to understand these goals in terms of the common distinction between “development” and “humanitarian” aid to poor countries. The latter distinction is problematic, both conceptually and pragmatically. As a conceptual matter, it is hard to keep the two categories distinct, given that development aid can serve to prevent the need for humanitarian assistance in the future, and humanitarian relief can be provided in a way explicitly designed to promote development. As a pragmatic matter, appeal to the distinction between development and humanitarian aid can result in poor decisions concerning resource allocation. Rubenstein (2006) argues that situations calling for “humanitarian” (“emergency” or “relief”) aid tend to be regarded by both the public and the aid community as generating more morally pressing demands for assistance than situations calling for development assistance, and that this fact is worrying, insofar as there is no principled reason to think that either should be given systematic moral priority over the other. I think that the argument that I am giving here largely sidesteps these valid concerns. While the distinction between development and humanitarian *aid* may be fuzzy, the differences between Goals 1 and 2 themselves (to which aid is a means) are sufficiently clear to render a distinction between the two goals viable. Where the pragmatic question is concerned, I can only emphasize that I am making no assumption here that either goal should systematically take priority over the other (see fn 119 *infra*).

prosperity. This is the view that Matthias Risse terms *Institutions*, according to which:

...Prosperity depends on the quality of institutions, such as stable property rights, rule of law, bureaucratic capacity, appropriate regulatory structures to curtail at least the worst forms of fraud, anti-competitive behavior, and graft, quality and independence of courts, but also cohesiveness of society, existence of trust and social cooperation, and thus overall quality of civil society (Risse 2003, 11)

This position contrasts with a competing view that Risse terms *Geography*, according to which “growth is primarily determined by factors such as location, climate, endowment of resources (including soils), disease burden, and thus agricultural productivity, quality of human resources, and transportation costs” (*ibid.*, 10). These contrasting views have very different implications concerning the likely effectiveness of international assistance in helping developing countries to move out of poverty and into sustained economic growth. If *Geography* is correct, outsiders may be able to make a considerable impact by providing material and technical resources – such as irrigation systems, fertilizer, anti-malaria medication or bed nets, hospitals, roads, educational facilities and computers – to compensate for poor initial natural endowments in the target country. A sufficiently large injection of such resources will ensure that the global poor are able to increase their savings rate, invest in human and economic capital, and launch themselves on a “take-off” into economic prosperity (Sachs 2005). If *Institutions* is correct, by contrast, such measures, however helpful they may be in temporarily relieving distress, will not make a long-term impact on economic growth. Because growth-promoting institutions must develop endogenously, in a gradual process of bottom-up evolution that is attuned to the peculiarities of local circumstances, “often all aid can contribute is analytical work, identification of and support for an internal champion for reform with a long-term vision, training of future leaders, bureaucrats, or professionals, and technical assistance of various sorts” (Risse 2003, 19). Or, if aid can help in a more substantial way than this, it can do so only if certain hard-won institutions are already in place. An influential study by Burnside and Dollar suggests that ‘aid has a positive impact on growth in developing countries with good fiscal, monetary and trade policies but has little effect in the presence of poor policies’ (Burnside and Dollar 2000). In fact, the situation may be even worse than this. Easterly (2006) argues that overseas financial aid of the kind and scale advocated by Sachs *et al.* may serve to actively undermine the stability of nascent or otherwise delicate institutions in developing countries.⁹⁴

⁹⁴ A third view, *Integration*, has it that growth is primarily determined by integration into world markets, which generates income, employment and the means for investment by households, along with the foreign exchange needed to sustain imports. While this view casts similar doubt to *Institutions* on the long-term efficacy of global resource transfers, it allows greater room for positive outside intervention than does the former view. This is because its supporters are both less likely to construe international interventions as positively harmful, and more likely to be optimistic about the ability of foreigners to impose internal structural reforms (allegedly necessary to ensure profitable access to markets) from without.

Doubts of a similarly “institutionalist” character also apply to cases where economic prosperity *per se* is not at issue. If Goal 1 is to be achieved, all of the world’s political communities will need to attain not only a certain minimal level of economic development, but also social and political institutions adequate for ensuring internal redistribution (so that all of the benefits from growth are not captured by the affluent), and the political will to use those institutions for that purpose. Among the most important institutions for promoting poverty reduction are standard civil and political rights. Freedoms of expression, political participation and association, and rights to bodily integrity and due process of law together assist the poor in improving their own situation, help others to publicize their plight and assist them, and are preconditions for the sorts of formal political institutions that contribute to poverty reduction over the long term (Nickel 1996, 180-3). Among the more important “cultural” preconditions of a high satisficing score, on the other hand, are plausibly a relatively egalitarian ethos, particularly in regard to gender⁹⁵, and a lack of ethnic hostilities or other sectarian conflict within the population. As should be clear, many of the points made by supporters of *Institutions* concerning the difficulty of transplanting institutions and norms from outside apply forcefully in each of these cases.

Where Goal 2 is concerned, institutionalists charge that the same problems of weak target-state institutions and informational constraints that hamper many Western attempts to foster economic growth in foreign countries have the result that much humanitarian assistance fails to reach its targets.⁹⁶ Some argue, more strongly, that aid is not just ineffective but counter-productive, in either the short or the long-term. It is said to inflict economic damage, by distorting the local economy (often by undercutting local suppliers), undermining work incentives, disrupting existing community support systems, and competing for scarce administrative and infrastructural resources. Expectations of continued aid from foreign countries are also said to reduce pressure on rulers to make the internal economic and political reforms necessary for the long-term elimination of poverty. Aid is often administered in partnership with oppressive local elites, thereby disguising the responsibility of the latter for the situation prompting the need for aid, providing opportunities for rule-reinforcing graft, and discouraging the implementation of democratic reforms that would lead to a more equal distribution of the bounty.

⁹⁵ Gender equality would not only improve the situation of women, but also that of children. It is well documented that redistributing household resources towards women results in improved child health and education (see Sen 2000).

⁹⁶ Easterly (2006) claims that these problems have been worsened by faults squarely on the supply side, including: Western arrogance, which has led officials to continue to implement policies that the evidence has clearly shown to be ineffective, and to refuse to take account of the views of those they were allegedly helping; a tendency on the part of aid officials to focus on large-scale goals that are highly general, unobservable, or impossible (such as the “end of poverty”), leading to problems of accountability and poor incentives to work efficiently; and the exploitation of humanitarian projects for self-interested ends.

Call *institutionalist skepticism* the view that *Institutions*, and its analogs in regard to the non-growth-related elements of decency achievement mentioned above, show that there is very little that outsiders can do to promote Goals 1 and 2. There are two reasons to reject this view. The first is that *Institutions* itself is weakly supported by the evidence. The kind of large-scale international cross-sectional statistical analysis on which much of the research in this area relies is subject to multiple interpretations, with the results highly dependent on the specific countries and time periods selected for analysis (see Sen 2006).⁹⁷ Analogous institutionalist claims concerning the ineffectiveness of humanitarian assistance are similarly underdetermined by the data. There is no evidence that either aid interventions taken individually or the aid industry as a whole are by their very nature obstructive of the widespread achievement of decency.⁹⁸ The most that can reasonably be concluded from the evidence to date is not that outsiders are unable to fulfill the basic needs of those residing in other countries, but rather that they have so far not gone about it as effectively as they might have done.

The second reason for rejecting *institutionalist skepticism* is that, even if *Institutions* and its analogs did turn out to be correct, there would surely remain some significant role for outsiders in promoting decency. Where furthering the economic prosperity of the developing world is concerned, at least the following measures are likely to be at least somewhat helpful: sharing of technological expertise; an effective solution to the third world debt problem; elimination of developed country protectionism and increased labor migration to the developed world. In cases where a given country has attained the necessary level of economic development, but nonetheless fails to reach a high satisficing score, the international development community can plausibly play an advisory role in helping developing countries to make the sorts of development decisions that can be expected to lead to pro-poor growth. Where it is not lack of knowledge, but rather lack of political will to secure internal redistribution or the protection of rights that is the problem, various forms of (carefully designed and orchestrated)

⁹⁷Dezhbakhsh suggests that “the empirical findings in this area resemble the output of a production process with inadequate input and deficient production technology” (2005, 97), due to overreliance on insufficient and unreliable data. Worse than this, there is reason to doubt that the question to which *Institutions* provides an answer is in fact well posed, insofar as it rests upon two questionable assumptions. The first assumption is there exists a single answer to the “growth question” that applies to all countries. It seems just as likely that there are in fact a variety of routes to successful development, different ones of which might be feasible within different countries. The second questionable assumption is that only one of the sets of factors highlighted by *Geography* or *Institutions* (or *Integration* – see fn 94 *supra*) will be crucially causal in any given case, rather than a combination of each. For both of these reasons, it is possible that the project of looking for a grand, sweeping theory of economic growth is quixotic (see Banerjee 2007).

⁹⁸ C.f. Garrett Cullity, who notes that, for this conclusion to be warranted, it would need to be shown “not just that...aid, taken as a whole, works to strengthen the causes of poverty and destitution, but that there is no form or source of...aid that succeeds in being economically and politically sensitive enough to avoid doing this. The studies of aid effectiveness that have been done do not seem to bear out that global claim” (2004, 46). To say this is not, of course, to deny that some particular interventions have been very harmful.

sanctions may be useful.⁹⁹ Goal 1 can also be promoted by means of international peacekeeping and conflict resolution operations. This is because internal and external peace are plausibly necessary conditions of a poor country's both attaining a satisfactory level of economic development, and of converting that level of development into a high satisficing score (*c.f.* Caney 2006).¹⁰⁰ Where Goal 2 is concerned, the developed world can work on ways of getting humanitarian aid more efficiently to its targets. It is debatable whether or not what is required to do this is feeding more money into large-scale international programs (Sachs 2005), or rather the promotion of small-scale local initiatives, either market-based (Easterly 2006) or "evidence-based" (Banerjee 2006).

When it comes to the real world, philosophers should tread lightly. The above measures are therefore offered merely as illustrations. However, what the wide range of possibilities listed does suggest is that institutionalist skepticism, in the extreme form given earlier, is unwarranted. Institutionalists are right to warn us against being naïve: simply throwing cash at the problem is not likely to further global decency. But if it is true that institutions matter, it is also true that that fact cannot plausibly be construed as warrant for the developed world to plead incapacity as an excuse for inaction.

4.5 The normative question: Should outsiders help?

I will assume from now on that outsiders are capable of effectively pursuing Goals 1 and 2, one way or another, with the acknowledgment that to what extent and how remains up for debate. In the remainder of the chapter I return to some explicitly normative territory. Some reasonable doubts about the appropriateness of Goals 1 and 2 do not concern their feasibility, but rather their moral acceptability. In particular, they concern the compatibility of those goals with two other goals that we should be concerned to promote. One of these additional goals is the universal achievement of collective self-determination; another the realization of domestic distributive justice.¹⁰¹

The question of how to balance global decency (or some close cousin of it) against these commonly recognized goals is a challenge faced by all theories of global distributive justice. But it might be felt to be an especially pressing one

⁹⁹ One option here is to either restrict or eliminate trade with a country that fails to protect certain minimal rights, or to encourage trade with an internally repressive regime in order to support internal reform by means of increased contact and influence. Other positive measures include providing financial or other support to the internal opposition in the target state; other negative measures include diplomatic sanctions (such as suspension of diplomatic relations); cultural sanctions (such as sport boycotts or restrictions on academic exchange) or military sanctions (such as restrictions on the supply of arms).

¹⁰⁰ De Waal argues that famine was intentionally used as a method of warfare in Ethiopia in the early 1980s (1997, 115-21). The increased military expenditure, destruction of infrastructure and resources, and diversion of investment overseas that is caused by civil war also harm development in both the warring state and its neighbors (Collier *et al.* 2003, 13-32)

¹⁰¹ The additional question of how to balance the goal of global decency against the goal of global fairness argued for in Chapter 5 will be addressed in Chapter 6.

for utilitarians in particular, insofar as their theory might seem to predispose them to weigh global decency over heavily in the balance. My twin aims here are to show, against such doubts, that utilitarians have reason to take seriously concerns about accommodating collective self-determination and domestic distributive justice, and to give a general idea of how they might attempt to address them.

4.5.1 Collective self-determination

I understand “collective self-determination” to refer to the ability of an organized group of persons to determine, to some substantial extent, i) the terms of its own internal organization, and ii) the translation of its goals and values into desired outcomes. In the specific case that we are considering here, an organized political community enjoys collective self-determination to the extent that it is able to set its own social, political, economic and cultural agenda without excessive interference from other parties, and to follow through on that agenda with some reasonable chance of success.¹⁰²

A political community might fail to be self-determining in one or more of the following four ways. As a result of:

- i) lacking the material or technical means to attain well-functioning political or economic institutions
- ii) the lack of opportunity for some degree of genuine input into the formation of collective decisions on the part of a large proportion of the population
- iii) the (coercive or otherwise) co-opting of significant aspects of its policy agenda by other powerful political or economic actors
- iv) the (systematic, and ongoing) failure of other actors to hold it responsible – within certain limits – for its choices.

It is in regard to the last two of these threats to collective self-determination that the promotion of global decency is most likely to raise problems. Take iii) first. Actions aimed at changing the behavior of another political community in order to promote decency within its population threaten to diminish the extent to

¹⁰² The qualifiers “substantial”, “excessive” and “reasonable” in the above characterization are intended to head off the following two misinterpretations. First, collective self-determination is not undermined by the failure *per se* of a given collectivity to succeed in one (or, indeed, many) of its endeavors; it matters both what the endeavor in question is, and how the failure in question comes about. Second, collective self-determination does not require *complete* independence or isolation from the actions and influence of others. One reason why some acts of external interference in the affairs of a given collectivity will not reduce the self-determination of the latter is that a diminishment of political autonomy in one aspect of the collectivity’s common life might be compensated for by an increase of it in some other aspect. Another reason why interference may have little impact is that it might affect an option (or set of options) that is not considered especially weighty or valuable by the collectivity in question. For more on these and other issues concerning the nature of collective self-determination, see Miller 1997.

which that political community has significant control over the development and execution of its policy agenda. The danger is especially clear in cases where what is at issue are attempts by outsiders to alter social and political institutions or cultural norms in a state that has already attained a high level of economic development. But the point also holds in the case of developing countries, when the type of development assistance offered by foreigners requires, or is conditioned upon, extensive interference in the internal affairs of the recipient state. The IMF's demand for certain fundamental social and economic reforms as a condition of balance-of-payments assistance has been claimed to reduce the collective self-determination of developing countries in this way; likewise the use of sanctions.¹⁰³ Take next iv). According to what we can call the "liability condition" on collective self-determination, if a political community is to be self-determining it must be held responsible for the outcomes of its choices. Having chosen and set upon a course of action, it must, within limits, be made to internalize the resulting costs. This condition is plausibly undermined by some forms of foreign aid. If country *A* is assured that country *B* is committed to promoting decency within *A*'s population, *A* may fail to take its own choices concerning promotion of that goal seriously. *A*'s decisions regarding social or economic policy may cease to be appropriately consequential or meaningful for its members, because the causal relationship between their choice of policy and (at least some aspects of) their later circumstances is substantially severed, due to the reliable expectation of assistance from *B*.

The above points should only concern utilitarians if their theory provides a case for caring about collective self-determination. It does. A large part of that case is similar in form to the arguments standardly given in utilitarian discussions of individual autonomy, and is closely related to the moral justification for the state system given earlier. Leaving political communities substantially in charge of setting and carrying through their own agendas is generally the best way to work around standard strategic constraints on the promotion of welfare, such as limits on information and altruistic motivation. Such a strategy also provides greater incentives for efficiency and productivity than the alternative in which communities are able to depend upon the efforts of others, and is likely to foster the sort of global cultural and political diversity that is of general benefit. This "instrumental" argument for collective self-determination can also be supplemented by a more direct one. For at least very many people, the ability to cooperate with the other members of one's political community in determining the shape and direction that that community will take is an important aspect of a fully autonomous and dignified life. If autonomy and dignity are central contributors to human wellbeing, as seems clear, this gives utilitarians reason to prefer that it be the members of a political community who determine the present

¹⁰³ The "conditionality principle" was introduced in the IMF in 1952, as a result of US pressure, against the wishes of other members. Initially applied only to Latin America, in the 1970s and 1980s it was extended to all developing countries. Standard conditions have included import liberalization, financial deregulation, reduced government spending, anti-union policies, and increased incentives for foreign investment.

terms and future outcomes of their collective life, rather than outsiders.¹⁰⁴ Neither of the above arguments can be said to provide a utilitarian case for respecting all appeals to domestic policy discretion as a matter of unyielding principle. But, as a moment's reflection reveals, this is not something that we should want. What the above arguments do plausibly provide, much more acceptably, is a robust presumption in favor of collective self-determination, within certain limits.

No problem?

Suppose that one accepts all of the above. Four distinct lines of thought can nonetheless tempt one to doubt that utilitarians ought to be troubled by the apparent prospect of conflict between the promotion of global decency and respect for collective self-determination. The first of these comes in the form of what we can call the *false contrast* objection. The achievement of global decency can be expected to correlate with a massive increase in collective self-determination on the part of the world's developing nations, by virtue of eliminating the poverty, suffering, ill-health and lack of education that undermine robust and fully inclusive participation in collective decision-making. But if decency is a necessary condition of collective self-determination in the way that this suggests, no genuine conflict between the two would seem to be in the offing: efforts to promote the former will simultaneously be efforts to promote the latter. The problem with this argument is its failure to take account of the strategic aspects of the situation. While it may be the case that, in the long term, global decency and collective self-determination are compatible, in the medium term there is plenty of room for conflict between the two goals (as was suggested just now). And the solution implied by the objection at issue – that we should resolve all such conflicts in favor of global decency – is unattractive for two reasons. Given that the achievement of global decency is a long-term project, this solution would put collective self-determination seriously at risk for a very significant period of time, however things turn out in the wash. And, more worryingly still, the “direct” argument for collective self-determination given

¹⁰⁴ Sen argues that participation in public decision-making and social choice not only plays “instrumental” and “direct” roles, of the kind outlined above, but also has a “constructive” aspect, in the sense that it contributes to the collective conceptualization of needs within a social context (2000, 148; see also 1.3.2 *supra*). He suggests that certain kinds of values and priorities cannot be formed independently of public discussion and debate, and that as a result collective self-determination is not a dispensable instrument for promoting independently acknowledged social ends, but rather an essential means of determining what those ends are in the first place. This sort of argument will only be available to utilitarians if the sense of “determining” social ends that is at issue is interpreted in epistemic rather than causal terms. Utilitarians can and should agree that public discussion is a way of *finding out* how one's own priorities and interests intersect with those of others (a process that can be expected to result, at least sometimes, in one's own priorities being altered). Utilitarians are however going to struggle with the independent idea that public discussion *creates* fundamental social values that did not preexist the conversation. On the epistemic reading, Sen's “constructive” argument will be a special case of the instrumental argument given in the text, which is why I do not list it separately.

earlier suggests that decency itself may not be fully achievable unless it is reached by a process that allows significant room for political autonomy.¹⁰⁵

A second attempt to dismiss concerns about the potential for conflict between collective self-determination and decency comes in the form of what we can call the *relative triviality* objection. The benefits of attaining global decency (which include the elimination of suffering and the preservation of life) are so much more important from a utilitarian perspective than the value of collective self-determination, this objection runs, that scruples on grounds of the latter in promoting the former are misguided. If the arguments for collective self-determination that I gave above are compelling, it is not in fact clear that the two goals are as disparate in significance as this objection makes out. But even if we assume that the achievement of decency is vastly more important than that of political autonomy, the objection is problematic for two reasons. The first is its failure to distinguish between moral and strategic priority. Where the achievement of one goal is morally more valuable than the achievement of another, it is not always the case that one ought to focus exclusively on achieving the more valuable goal first. This is because it may be more valuable still to achieve *both* goals, and the prior achievement of the first goal may preclude the (full or partial) achievement of the second goal afterwards. A second problem is that this objection has not learnt the lesson of the second response to the false contrast objection given just now. In some cases the more valuable of two goals itself justifies giving the less valuable goal a certain strategic priority in everyday decision-making. This is arguably one of those cases, if, as suggested above, the achievement of global decency is itself conditional on preserving substantial room for collective self-determination.¹⁰⁶

The third and fourth attempts to dismiss the decency/collective self-determination conflict are premised on problems of governance. The first can be termed the *misidentification* objection. In many cases where a community fails to attain a high satisficing score, the government of the community in question does not have a plausible claim to speak in the name of its population. But if this is so, external interference aimed at changing that government's behavior in order to promote decency will run up only against the self-determination of that government, not that of the community that it governs. The second, "*exploitation*", objection claims that the concept of collective self-determination

¹⁰⁵ This is a good example, then, of a case where utilitarians need to pay attention not only to, as Sen puts it, "culmination outcomes" (that is, only final outcomes without taking any note of the process of getting there...) but also to "comprehensive outcomes" (taking note of the processes through which the culmination outcomes come about)" (Sen 2000, 27).

¹⁰⁶ The general form of this second argument can be understood on the model of indirect utilitarian defenses of giving procedural priority to certain basic rights over increases in the general welfare. Certain basic interests of persons are not thrown into the mix along with all other interests at stake, but are singled out for special treatment, or given "asymmetric prominence" (Sen 2000, 65) by virtue of their special features.

is overly indeterminate and pliable, and that, as a result, appeals to it can encourage corruption and inefficiency.¹⁰⁷

While both objections have some bite to them where the dismissal of particular appeals to collective self-determination is concerned, they cannot plausibly be claimed to dismiss, quite generally, the possibility that genuine collective self-determination and decency will come into conflict. Where the misidentification objection is concerned, this is because the connection between a low satisficing score and a government that does not speak in the name (or govern in the interests) of its population is not tight. Some widespread failures of decency coincide with the rule of a government that is accorded legitimacy by a large proportion of the population. A second problem lies with the implication that the failure of a government to express the collective will of the people extinguishes all concerns about accommodating that collective will at all. While it will be very difficult to know what policies a population would set if it were able to, in the absence of either a government that minimally represents its interests, or any other organized body that claims collective authority, this does not imply that foreigners have free moral rein to direct those policies in directions that they themselves think appropriate. The main lesson of the exploitation objection, on the other hand, is not that all appeals to collective self-determination ought to cease, but rather that we need a story about how in practice to distinguish the spurious and harmful instances from those that deserve our respect.

What to do?

The above discussion shows, in the face of some potential doubts to the contrary, that utilitarians have reason to take the value of collective self-determination seriously when advocating global decency promotion. The value of the former imposes real constraints, here and now, on the pursuit of the latter. What precise form these constraints take will depend to some extent on the details of the particular situation. But it would be useful if we could at least devise some general normative guidelines to aid decisions in this area. Three main strategies for deriving such guidelines present themselves. First, we might take a “supply-side” strategy. We could attempt to distinguish between forms of outside assistance or intervention that are more likely to impede collective self-determination and those that are less likely to, and then recommend favoring the latter. Alternatively, we might take a “demand-side” strategy. We could attempt to distinguish between claims of policy discretion on grounds of collective self-determination that deserve the respect of outsiders and those that do not, and then recommend deference only to the former. A third option, distinct from both

¹⁰⁷ Thus, in his comments on Banerjee 2006, Mick Moore expresses frustration about the emphasis on “terms like empowerment, capacity building, participatory development, strengthening civil society, decentralization, and local ownership” in the international development community, on the grounds that focus on such “immeasurable” goals diverts attention from practical projects that can be expected to directly aid the poor. Banerjee himself emphasizes the way in which “the current fashion for channeling aid into broad budgetary support (rather than specific projects) in the name of national autonomy” provides opportunities for graft on the part of corrupt officials.

of these, would be to focus on positive measures to promote the self-determination of developing countries in the area of global decency promotion, particularly by strengthening the presence and impact of such countries in the global institutions that manage poverty reduction.

Each of these strategies has its problems. A difficulty with the supply-side approach is that the sorts of decency-promoting measures that are least likely to impact on collective self-determination – such as cash grants, or the sharing of technological innovations – are also less likely to be successful in promoting decency than are some more invasive interventions. This presents a danger that attempts to accommodate collective self-determination will come at too high a cost for decency. A problem with the demand-side approach is the difficulty of drawing the distinction that it calls for. One possibility is to claim that appeals to collective self-determination only deserve respect when the population of the collective in question has the opportunity for some degree of genuine input into the formation of public decisions. But the criterion on which this suggestion relies threatens to be either overly inclusive or overly exclusive, depending on how it is interpreted. If “opportunity for some degree of genuine input” were interpreted strictly, it might well rule out most developed countries as substantially collectively self-determining (counter-intuitively, I take it). If it were instead interpreted weakly, any government that allowed for elections, however unfree or unfair, might slip in. Applying the proposal in practice is likely to embroil us in tortured disputes about whether or not the relevant criterion is satisfied. A difficulty with the third option is that it is unclear how effective it will be. While increasing the fairness and representativeness of international development institutions has many things to recommend it, it is not clear that a significant increase in the collective self-determination of developing nations in the face of attempts to promote decency is among them.

There is, then, no quick fix in this area. Some specific measures, however, do seem promising. One is a decrease in the use and scope of conditionality within the IMF, so that the latter reapproaches its original narrow mandate of stabilization and surveillance, combined with the creation of alternative sources of finance, so as to reduce the reliance of countries upon the Fund (Patomaki & Teivainen 2002, 65-7). Another is to increase accountability mechanisms in the operation of international development assistance and humanitarian aid. Holding governments to specific and measurable targets of their own devising can be expected to reduce the opportunities for corruption and waste while preserving space for political autonomy. Finally, where the demand-side strategy is concerned, it is probably advisable to focus attention not on the general representative credentials of the government in question, but rather, on a more piecemeal basis, on the content of the particular appeals to discretion on grounds of collective self-determination that that government makes. Resistance to implementing a proposed reform on the (plausible) grounds that it is culturally inappropriate, for instance, deserves a more sympathetic hearing than does a bald assertion that any such reform is strictly the government’s business.

4.4.2 Domestic distributive justice

A second way to object to Goals 1 and 2 on normative grounds is to claim that their pursuit is incompatible with the concurrent pursuit of domestic distributive justice. Under the terms of the global division of moral labor argued for in Chapter 2, the chief focus of each state is to be the promotion of the wellbeing of its own members, in accordance with something like the principles of domestic distributive justice argued for in Chapter 1. But if we take this strategy to the limit, it does not seem to leave much room for states to promote decency globally. Attempts to further Goals 1 and 2 threaten to undermine the specialized focus on sub-sets of the world's population that constitutes the core of that strategy.

There are two main ways to try to wriggle out of this problem. One might attempt to dissolve the conflict in question by suggesting that a policy whereby states focus exclusively on promoting the welfare of their own population is itself the surest path to global decency over the long term. On this suggestion, the state system can be expected to function like the market in the minds of some economists: allowing the pursuit of domestic self-interest to maximize the global good, with minimal need for constraint or adjustment. But this would surely be overly optimistic. Not only are some specific ways of pursuing domestic distributive justice apt to exert negative effects on the welfare of other populations, perhaps working against the achievement of Goals 1 and 2, but an exclusive focus on domestic distributive justice would presumably fail to promote those goals, even if it did not actively undermine them. A second way to attempt to eliminate the problem would be to claim that, in light of the genuine practical conflict between global decency and domestic distributive justice, the former goal ought to be rescinded. Our duties to promote justice in our own populations show that an alleged responsibility to further the attainment of a minimally decent life by people in other political communities is in fact unacceptable, even if the result is a world in which billions of people continue to experience terrible lives. It is difficult to see how utilitarianism could support such a position, given the strong utilitarian argument for global decency given in 4.2 *supra*. The suggestion is also hard to square with the strong pre-theoretical conviction that at least many of us have that the failure of foreigners to attain a minimally decent level of wellbeing generates moral demands on us.

Despite, then, the ultimate utilitarian reduction of both domestic and global justice to a single concern, there is a practical conflict between the two goals that allows for no easy escape. This conflict derives from the fact that the "global division of moral labor" strategy pulls states in two directions. As Ellis explains, "on the one hand, [states] have a derivative duty to their own citizens; on the other hand, their fundamental duty is to the world at large. And...there may be circumstances in which promoting the good of their own citizens is not compatible with pursuing the more general goal" (1992, 173). In light of this problem, a full defense of Goals 1 and 2 needs to show that they can be furthered in a way that does not overly compromise our legitimate concerns with domestic

welfare promotion.¹⁰⁸ Utilitarians need to furnish at least some general advice on how to deal with the conflicts that will inevitably arise in the course of the joint pursuit of both sets of goals.¹⁰⁹ To illustrate the sort of guidance we need, consider the following situations, in which a government must choose:

- i. whether or not to implement a trade policy that would result in a significant boost to domestic growth, but which would impose extreme hardship on the worst-off 10% in a foreign country
- ii. whether to use part of a budget surplus to fund special educational programs for disadvantaged children domestically, or to instead transfer it to an overseas development fund.

The first of these questions suggests a need to develop some “negative” duties specifying certain things that societies ought not to do to other societies (or certain outcomes for other societies that they ought to avoid) in their pursuit of domestic distributive justice. The second suggests the need for some clarification on how societies ought to balance their “positive” duties to promote domestic goals against their positive duties to promote global goals. The following discussion will be organized along these lines.¹¹⁰

Negative duties

Our first task is to determine which decency-related constraints states should recognize as limiting their pursuit of domestic distributive justice, or of domestic welfare more generally. To do this, we need to answer two questions. First, which broad types of harm to, or interference with, other states are states likely to be led to in the course of domestic welfare promotion? Second, which of these types of harm or interference should utilitarians be concerned to prohibit (with or without the sanction of international law), given the goal of global decency?

¹⁰⁸ If this seems to prejudice the issue in one direction, it should be pressed that the same applies *vice versa*.

¹⁰⁹ Utilitarians have not been very good at facing this problem head on. Goodin spends no time at all on it in his 1995 paper. And Bentham gives a quick and unsatisfying solution to it in the introductory essay of his *Principles of International Law* (1789). We are told that, whereas “the end of the conduct which a sovereign ought to observe relative to his own subjects” is “the greatest happiness of the society concerned”, “the end of the conduct he ought to observe towards other men” is “the general end - the most extended welfare of all the nations on the earth.” Perhaps in Bentham’s time it was slightly more plausible to suggest that conduct relative to one’s co-nationals could be distinguished from conduct relative to other people in this crisp fashion. But, given the extensive interconnections between contemporary states, and their immense power to effect both good and evil on others, the attempt is now hopeless.

¹¹⁰ I understand negative duties here in the usual way: as duties that prohibit certain specific kinds of actions towards others - paradigmatically, forms of interference or aggression. Positive duties, in contrast, are those that require actions to aid others: either in the form of the prevention of harm or the provision of benefits. There is room for doubt about how sharply this distinction can be drawn in practice. I will be focusing here on the clearer cases, so will not need to get into the messier metaphysical details.

The instances of harm that spring most immediately to mind are of the intentional kind: seizure or destruction of foreign resources, including land; the enslavement or murder of foreign populations; and the erection of barriers to the movement of goods or people across borders. But negative cross-border externalities can also occur as the unintentional effect of economic or social interaction. The global spread of diseases such as HIV-Aids or influenza presents one example. Similarly, international trade in goods, services and capital has the potential for significant negative effects on the satisficing scores of trading partners, in particular by virtue of the increased vulnerability that it can generate for the poor. Negative spillovers from the economic activity of states can also extend to countries that are not themselves major trading partners, due to the fact that the value of the resources that one party holds is in some cases partly dependent on the amount of resources that others hold. Thus, as Robert Goodin notes, (at least *ceteris paribus*) “for any commodity for which there is a worldwide market, like oil, the more cash the rich peoples of the world have to pay for it, the less of it the poor peoples of the world can afford to buy” (2002, 8). The one area of genuine novelty in this familiar story of domestic welfare promotion at foreign expense is arguably severe environmental harm, such as global climate change, declining biodiversity and the depletion of energy sources. Such harms result from domestic policy decisions whose effects are not – often cannot – be contained within the borders of the country where they originate, and have major economic and political implications in addition to their direct environmental impact.¹¹¹

Given the possibility of negative cross-border spillover effects such as the above, what limits should utilitarians advocate on the ways in which states may pursue domestic welfare, in light of the goal of global decency? Some of these limits are relatively easy to discern: military aggression and territorial invasion, purely for national gain, as well as violations of the basic rights of foreigners, are pretty clearly ruled out. Recognition of negative duties of this kind is embodied in a range of international treaty regimes that have evident utilitarian support. However, the cases of economic and environmental externalities are more difficult to deal with, in large part due to problems of information. The causes of such externalities are harder to trace, making the actions that lead to them more difficult to prohibit, and it is harder to know what the range of available alternative policies is, making it unclear which within that range should be preferred. Even when our focus is strictly on a domestic jurisdiction, and despite decades of macroeconomic theory, we often do not know beforehand what the effects of a given economic policy (say, an increase in the interest rate) will be, nor, if we do foresee certain undesirable events (e.g. rising inflation), how best to avoid them. These difficulties are magnified when our focus of concern includes the economies of multiple other countries.

¹¹¹ The news is not all bad where cross-border externalities are concerned. As Goodin notes, some such externalities may be positive – where justice in one jurisdiction “prove[s]” “catching” worldwide” – or neutral – where “the benefits to the cause of justice (at home *and* abroad) more than [offset] harms” (2002, 7). But these happier cases are not our topic here, and are in any case likely to be less common.

In the face of such difficulties, we will not be able to identify a comprehensive list of specific types of domestic economic or environmental policy that should be prohibited or constrained on grounds of global decency. At the same time, however, given these same informational problems, it is not helpful to resort to such generalities as the claim that “every proceeding---every arrangement, by which the given nation should do more evil to foreign nations taken together, whose interests must be affected, than it should do good to itself” should be regarded as a “positive crime” (Bentham, 1789). This suggestion is quite unworkable as the basis for political action, given that we are very rarely going to have the kind of information available to determine whether or not the condition that it specifies is satisfied. What we need is a principle, or principles, of an intermediate nature: general enough to accommodate the fact of our limited knowledge in this area, but also specific enough to furnish some genuine guidance. I suggest the following:

Reasonable Care.

- i. In promoting domestic welfare, a political community *A* ought to take reasonable care to avoid a foreseeable reduction, as a result of its activities, in the satisficing scores of other political communities.
- ii. Where *A*’s activities would result in a significant increase in *A*’s satisficing score that could not be obtained otherwise, and where some foreseeable reduction of a foreign political community *B*’s satisficing score as a result of those activities is unavoidable, *A* ought to take reasonable care to ensure that the reduction in *B*’s score is as small as possible.
- iii. Where, despite satisfaction of i) and ii), a significant reduction in *B*’s satisficing score does occur as a result of *A*’s activities, and where *A* has a significantly higher satisficing score than *B*, *A* ought to provide compensation to *B* for that reduction.¹¹²

If this principle (or set of principles) is to be rendered fully precise, more will need to be said about what “reasonable care” involves in clauses i) and ii); what “significant increase”, “significant reduction” and “significantly higher” involve in clauses ii) and iii); and about the type and degree of compensation required in iii). Something will also have to be said to ease reasonable doubts about the possibility of determining in practice a) what a political community’s satisficing score is, and b) whether the cause of any reduction in that score is genuinely or primarily the activity of another political community. In many cases, reductions might be traced instead to the policies of the community itself, to the activities of other political communities, to luck, or, perhaps most frequently, to some combination of all of the above.

¹¹² This principle takes off in part from the principles of “due care” advocated independently by Henry Shue (1997) and Aaron James (2005, 10).

These are not just details. If these matters cannot be sufficiently nailed down, the principle will be indeterminate and open to manipulation.¹¹³ Although there is a limit to how much precision it is sensible to aim for here, I think that it would be both possible and helpful to establish some outer bounds in each of these areas. In the meantime, however, my view is that the above principle does already, as it stands, allow for some determinate and intuitively appealing conclusions about acceptable and unacceptable cross-border externalities. We now, for instance, can explain in some more detail what exactly is wrong, from the perspective of a concern with global decency, with military aggression, territorial invasion, or violations of the basic rights of foreigners, purely for national gain. Such activities are very likely to reduce the satisficing scores of the foreign communities affected; what increase they do afford in the aggressing community's satisficing score (often not much) could very likely be obtained otherwise, with less negative external impact; and the prospect of compensation after the event is generally very far from the agenda. Moreover, beyond these antecedently clearer examples, *Reasonable Care* also provides us with resources to decide less obvious cases.

To see this, take the example with which we started, in which a government must decide whether or not to implement a trade policy that would result in a significant boost to domestic growth in its country, *C*, but which would impose extreme hardship on the worst-off 10% in a foreign country, *D*. Assume that the hardship in question either cannot or will not be compensated for. *Reasonable Care* prompts us to ask a number of questions. First, is there any alternative growth-promoting policy available to *C* that would foreseeably not have such a devastating effect on *D*? Second, would the boost to *C*'s domestic growth from the proposed policy translate into a significant increase in *C*'s satisficing score? Third, does *C* have a significantly higher satisficing score than *D*?¹¹⁴ If the answer to the first of these questions is affirmative, *Reasonable Care* would cast doubt on the propriety of the policy. If the answer is instead negative, the second and third questions come into play. The possible answer combinations are as follows, with Y standing for "yes", N standing for "no", and the answers given in the order of the questions above: a) NN; b) NY; c) YY; d) YN. If the answers are as given in a), b) and c), the policy looks impermissible under *Reasonable Care*. If the answers are instead as given in d), the policy might be permitted. No doubt there will be many instances where the precise implications depend more delicately on the details of the case. What *Reasonable Care* does provide us with in such cases is a way of organizing those details in a way that makes them more amenable to moral reflection.

¹¹³ Sykes raises concerns of this kind in his 2003, in regard to the GATT "escape clause" (Article XIX), which permits countries to impose temporary trade barriers in order to protect industries that suffer "serious injury" or the threat of it due to "increased quantities" of imports. Sykes claims that effective application of this clause has proven impossible in practice due to a failure to settle such interpretive issues as the baseline against which increased quantities of imports are to be measured, the nature of "serious injury", and the criteria for determining whether or not increased imports cause such injury, or the threat thereof.

¹¹⁴ Some of these questions are going to be very difficult to answer. It therefore pays to reiterate the emphasis on foreseeability and the taking of *reasonable care*.

Positive duties

I argued in the previous sub-section that political communities should be trying not to reduce other political communities' satisficing scores, or, if they must reduce them, to reduce them by as little as possible and, in some cases, to provide compensation where the reduction is significant. I think that this sums up well the decency-related negative constraints on domestic welfare promotion that political communities ought to recognize. But respect for these requirements alone, while important, will not suffice to exhaust the duties of political communities where the promotion of global decency is concerned. Our goal is not merely to avoid making the global satisficing score worse than it already is: we also want to improve it. On the face of it, this would seem to require positive assistance from some political communities to others.

How far should positive duties of assistance extend? An acceptable answer to this question needs to steer between two extremes: it must not undermine the specialized focus on sub-sets of the world's population that constitutes the core of the global division of moral labor, but nor must it fail to give the demands of global decency their due. A satisfactory answer also needs to be sensitive to the fact that countries plausibly vary in the degree to which they are morally required to positively further the satisficing scores of other countries. This is so for the following reasons: i) some countries are incapable of doing anything in that regard, ii) some countries are capable of doing something, but only at cost to their own satisficing score, and iii) some countries are much less capable of doing something than others, or only at much greater cost. Points i) and ii) suggest that we need to specify a certain threshold of capacity beyond which these duties kick in. Point iii) suggests that when these duties do kick in, the extent of their demands should vary, at least to some extent, according to capacity.

We can think about the preceding desiderata in terms of two questions. Which countries are in the game of positively promoting the satisficing scores of other countries? And how much, or what kind of, discretionary space for the pursuit of domestic welfare do those in the game need if the global division of moral labor is to be preserved? The first of these questions can be swiftly answered. Countries with a very low satisficing score are not themselves under any positive requirement to increase the satisficing scores of other countries: either because they are incapable of doing so, or because their doing so would be so costly for them as to result in little or no overall gain in global decency. (A plausible way to render this suggestion more specific would be to claim that positive decency duties kick in when a country's per capita income, PPP adjusted, is roughly at or above the level of the OECD countries). The second question requires lengthier treatment.

The following are what I take to be the two main strategies available for determining what limits political communities ought to recognize on the positive demands of global decency promotion, so as to preserve the global division of moral labor:

Other-centered. Specify certain kinds of decency-related interest in the members of foreign populations that ground a demand on other political communities to positively further those interests, and certain kinds of decency-related interest that do not.

Agent-centered. Either specify a degree of sacrifice on the part of a political community beyond which that community is not required to go in positively furthering global decency beyond its borders, or specify a certain weight to be given to the interests of that community as against the value of promoting global decency internationally.

Elfstrom's proposal regarding cross-border positive duties is of the other-centered variety. He writes:

When leaders face conflicts between meeting the basic wants of their own constituents and those of aliens, they are justified in placing their own nations first. However, they are not entitled to place the lesser concerns of their own citizens ahead of the vital concerns of others in cases where these clash. (1990, 27)

Elfstrom defines basic wants as the "biologically-determined necessities of life", i.e. as that subset of decency interests that I referred to in Goal 2 as "basic needs". The restriction of positive global decency duties to the promotion of basic needs certainly places some brakes on the extent to which the former will detract from domestic welfare promotion. But it has three defects. The first is the weakness of the rationale for giving the biologically-determined wants of foreigners strict priority over the non-biologically-determined wants of compatriots. I suggested in chapter 1 that such goods as food, shelter and health care are only a subset of the goods necessary for a minimally decent life. But if this is so, it is not at all obvious that aliens' needs for, say, food should take systematic priority over constituents' needs for, say, education. The second problem with Elfstrom's proposal is that it appears to take the promotion of the more ambitious aspects of Goal 1 – which incorporates satisfaction of the non-biologically-determined wants just mentioned – entirely off the menu. Given that political communities are the agents most capable by far of promoting Goal 1, this strategy would effectively equate to denying the importance of that goal, something that I do not think that utilitarians can reasonably do. The third defect is that, even given the basic needs restriction, this strategy looks likely to imperil the global division of moral labor. Presumably a developed country such as Australia, whose score on basic needs satisfaction is already high, would be required on this proposal to devote almost all of its attention to ensuring that the basic needs of the inhabitants of the developing world were satisfied.¹¹⁵ I am inclined to think that,

¹¹⁵ This suggestion in fact looks worrisome even purely from the perspective of global decency, given that the persistence of countries the great majority of whose members flourish well beyond the attainment of decency is plausibly an important contributor to the eventual attainment of decency worldwide. Insofar as it is developed countries that will provide the mix of markets, technology, knowledge, employment and aid resources that are needed to raise the majority of the

at least given the current state of the world, this third problem undermines not only Elfstrom's particular variant of the other-centered approach, but that approach in general.

That leaves us with the agent-centered strategy. A simple suggestion is to specify the relevant sacrifice in terms of a fixed percentage of GDP. This suggestion is unpromising for two reasons: first, the monetary focus reveals a naïve understanding of what the promotion of Goals 1 and 2 requires in terms of foreign assistance, and second, the selection of a fixed percentage is not well placed to accommodate changes in global satisficing scores over time. The amount of sacrifice that might be appropriate now may be either too small if global deprivation worsens in coming decades, or too large if it improves. A more sophisticated proposal involves specifying a certain constant weight W to be given to the value of domestic welfare promotion as against that of global decency when making resource allocations. This proposal is flexible enough to accommodate changes in the situation of the global poor over time. But it may be *too* flexible. If some set of new (expensive) technologies suddenly massively increased our ability to further global decency, this approach might whittle down to an unacceptable level the amount of discretionary space permitted to affluent countries.

Mulgan's work on the cognate issue of the beneficence duties of individuals¹¹⁶ suggests the following as a promising alternative. Perhaps instead of setting W at a constant value, we should allow it to vary, non-proportionately, with the amount of global decency achievement at stake (2002, 267 ff.). In other words, the amount of extra weight that a political community would be permitted to give to the promotion of domestic welfare over the promotion of global decency would increase with the amount of global decency achievement at stake, although the former not as sharply as the latter. Whatever one thinks of this idea as part of an account of the primary demands of morality (where, as will come as no surprise, I do not sign on), it has several promising features when construed as an account of the secondary demands of global distributive justice. It is better placed than the other-centered strategy to preserve the global division of moral labor, insofar as it incorporates a presumption in favor of at least some degree of co-citizen priority. But it is also well placed to respond to the demands of global decency. Not only the basic needs of foreigners, but decency taken more generously, are understood as placing competing demands on political communities, demands which, while they may lessen in extent, do not go away as the cost of fulfilling them in a given instance increases. Moreover, given that the sacrifice in question is construed not in absolute terms, but rather in terms of cost to the assisting

world's population out of poverty, an immense decline in the standard of living of existing developed countries would be counter-productive (c.f. 6.3.3 *infra*).

¹¹⁶ This question, while distinct from the one that we are interested in, is nonetheless clearly isomorphic to it, in the following sense. It concerns the extent to which morality requires positive furthering of the interests of the world's population, given the assumption that a certain degree of partiality towards a subset of that population (in the individual case, oneself and one's near and dear) is morally justified.

community, this strategy is able to accommodate differences in capacity to promote decency across political communities.

Nonetheless, the proposal as sketched above suffers from one rather serious defect from an indirect utilitarian perspective: it is unclear how it is supposed to guide us in making policy decisions. Consider the question with which we began: that of whether a government ought to use part of a budget surplus to fund special educational programs for disadvantaged children domestically, or instead to transfer it to an overseas development fund. On the approach under consideration, the answer to this question will depend on a) the cost to domestic welfare of foregoing the educational programs, b) the contribution to global decency that would be produced by the development fund with the resources in question, and c) the value of the variable W , taking into account both of these things. Saying this does not seem to take us very far in the direction of an answer, primarily (though not solely) because we so far have no idea of how to determine what W ought to be. This is unsatisfying, and – to end with a whimper – I am not sure what to do about it. While I do think that the agent-centered approach briefly outlined here is the most promising of those available to utilitarians, this may not be saying all that much. The good news for utilitarians is that it is not clear that anyone else has a better idea.¹¹⁷

4.5 Conclusion

There are several remaining questions regarding global decency that I have not had the space to address here. One issue concerns matters of fairness in the distribution across developed countries of responsibility to promote Goals 1 and 2.¹¹⁸ This question divides into two. What initial distribution of responsibility would be fair? And how does a political community's responsibility to do its fair share respond to the failure of other communities to do theirs? (Is that community required to do less, more, or the same as what it would have been required to do under full compliance?) Another important issue is that of whether or not failures of domestic distributive justice alter the global decency duties of foreign communities. (If a country such as Brazil avoidably fails to secure domestic distributive justice, does the developed world continue to have

¹¹⁷ Perhaps the situation is slightly better than presented. After unearthing some similar difficulties in formulating a principle of individual beneficence, Murphy writes that “we have not found a plausible principle of beneficence, but rather only the *form* of one” (2000, 71, italics in original). He then claims that this allows us to at least “know what we are trying to guess at, and this opens the space for good-faith argument about what kind of life would satisfy the principle in practice”. Maybe something similar can be said here.

¹¹⁸ Murphy calls this a “second-level” moral question, and distinguishes it from the sort of first-level questions of fairness that I discuss in the following chapter:

Once we have specified an aim that all people are plausibly thought to be responsible for, we can ask the question of how collective responsibility for the aim devolves into the responsibilities of individuals. It is at this stage that what we could call a second-level moral thought arises: responsibility should be allocated such that compliance effects are fairly distributed (2000, 105).

an (undiminished) positive duty to promote decency in the Brazilian population?) A further set of issues concerns how the assistance provided by affluent political communities ought to be allocated across communities in need (including the question of how aid resources ought to be allocated between Goals 1 and 2).¹¹⁹ Finally, there are questions about the decency-related duties of collective agents other than states, such as corporations or international institutions.

Although there remains plenty to be said, then, I think that this chapter has provided a helpful background against which to address these and other remaining questions. I have explained why we should care about the attainment by individuals of a minimally decent level of wellbeing; argued for a specific interpretation of what we should be aiming for at the global level where that ideal is concerned, in terms of two relatively precise goals; defended those goals against the potential charge that states can do little to further them; and provided some suggestions concerning how any conflicts that might arise between global decency and the goals of collective self-determination and domestic welfare promotion are to be negotiated. I think that the resulting proposal, if incomplete, is one well placed to appeal to a range of non-utilitarians, while nonetheless retaining strong utilitarian support.

¹¹⁹ See Rubenstein 2006, pp. 29-32, for five reasons why utilitarians should not necessarily favor “development aid” over “humanitarian aid”.

Chapter 5. Fairness and Equality

5.1. Beyond decency

This chapter concerns what utilitarians ought to say about goals of global distributive justice other than the attainment by individuals of a minimally decent level of wellbeing. The few utilitarian theorists of global distributive justice who we find in print either deny that such goals exist, or postpone indefinitely addressing them in any detail. Instead they restrict themselves to the question of how to further global decency (or something like it), treating it, for all intents and purposes, as our sole distributive concern at the global level.¹²⁰ Two features of utilitarianism arguably make a minimalist approach of this kind attractive. One is that, as mentioned at the beginning of the previous chapter, utilitarians find themselves squarely within their comfort zone when addressing matters of decency. The relationship of the goals that I discuss in this chapter to welfare maximization is less immediately apparent. The second feature is the central role assigned within utilitarianism to strategic constraints, such as limits on information, motivation and coordination. The fact that such constraints are intensified at the global level might be felt to call for scaled-back ambitions once utilitarians move beyond the bounds of the state.¹²¹

I find this minimalist strategy unattractive, for the following reasons. For one, a theory of global distributive justice that fails to address issues other than decency will be unable to help us to compare, on grounds of justice, institutional arrangements with different distributional implications in the supra-decent domain. Questions of this kind are not only apparently well formed; they are also pressing. We do not think that justice permits global institutions or agents whose practices or decisions have highly significant distributive consequences to do just anything they please, merely because the consequences in question do not implicate the basic wellbeing of those they affect. Second, there are some commonly raised moral reasons for and against particular policies or institutions, especially within the context of collective activity, that an exclusive concern with the attainment of decent levels of wellbeing does not allow us to accommodate. Perhaps these reasons are in the end unconvincing, but utilitarians ought to at least have something to say about them, even if they

¹²⁰ Elfstrom, for instance, writes: "In general terms the position of this work is that all have a strong obligation to work to satisfy basic wants wherever they are found, but a much weaker obligation to look after the secondary wants of each and every human being (1990, 15) – and then spends no time at all on the second kind of obligation. Similarly, Goodin (1985) confines his global concerns to "protecting the vulnerable", where the latter are presented as those persons whose basic welfare interests are at risk. Goodin, to be fair, explicitly presents the principle of protecting the vulnerable as a "partial principle of morality" making "no claim to order the entire moral universe" (1985, 117); nonetheless, it is all that he offers.

¹²¹ Thus, Elfstrom justifies his focus at the global level on "basic wants" by means of the claim that "for the most part they are easily measured and relatively easily met", whereas 'secondary wants' "vary widely and often unpredictably" and their satisfaction "depend[s] on the working of a social context, something not easily supplied by outsiders" (1990, 160).

finally reject them. Third, there is a concern about inconsistency. If there are no concerns beyond decency at the global level, but there are such concerns at the domestic level, as most utilitarians want to say, we need to be given an argument explaining what makes for the difference. If this argument is not convincingly made, concerns beyond decency at the domestic level may themselves begin to look suspect. Finally, there are substantive utilitarian reasons for thinking that adherence to principles of global distributive justice focused exclusively on decency would not serve to maximize aggregate utility. Some of the same utilitarian reasons for supporting supra-humanitarian norms of justice within the state plausibly extend to global politics – although, as I will argue below, both the arguments and the resulting principles are likely to be different in nature.

One commonly expressed distributive concern beyond, or other than, decency is the treatment of individuals in accordance with principles of fairness. Another is the obtaining of a certain degree of equality across those individuals along certain dimensions. Neither of these concerns wears its friendliness to utilitarianism on its face: appeals to fairness have a distinctly deontological air, and an interest in equality may seem to sit poorly with the ultimate focus of utilitarianism on the sum total of welfare. This chapter attempts to go beyond these initial appearances, to consider the question of whether or not there is, after all, an indirect utilitarian case for fairness and equality, in the domain of global politics in particular. The verdict is a mixed one. I argue in the first part of the chapter that a concern for distributive fairness can and should be incorporated into the framework of utilitarianism, and then draw out the implications of that idea within a range of contexts of international association. In the second part of the chapter I turn to the question of whether or not considerations of equality ought to play a normative role in global politics, independently of their connection to decency or fairness. I argue that, in this second case, the skeptics are correct, and that, at least for now, the utilitarian case for global equality, unlike like that for global fairness, is a difficult one to make.

5.2 Fairness and distributive justice

Before turning to the questions of why utilitarians ought to care about fairness, and of how it might apply to matters of global distribution, I need to say something about how I will be understanding the idea of fairness in the discussion to follow. Rather than attempt to provide a full analysis of the concept, I will simply appeal to two norms that I take to be central elements or instances of it. The first of these is the norm of *non-discrimination*, which requires that if a given practice results in an unequal distribution of benefits across individuals (net, *i.e.* taking into account burdens also imposed), this departure from equality must be given a special, non-arbitrary justification. The second norm is that of *reciprocity*, or fair return, which requires that, “if others have incurred costs in order to produce benefits for you...you should be prepared to incur similar costs in order to produce similar benefits” for those others (Goodin 1992, 23). In many cases an ideal of reciprocity mandates return not of a

good, but rather of an act: adherence to a set of rules (*ibid.*, 26). When, for instance, you benefit from the sacrifices made by others in complying with the rules of the market, reciprocity requires that you similarly comply. I think that most canonical instances of fairness or unfairness can be understood in relation to these two norms.

Fairness, in both its non-discrimination and reciprocity variants, applies in many settings and to many things. My concern with it here is restricted in two ways. First, I am exclusively concerned with what I will call *structural* fairness. As I understand it here, structural fairness applies exclusively to social institutions, structures or practices (henceforth “structures”) that satisfy the following five conditions. First, the collective behavior that goes to constitute the structure must exhibit a certain degree of regularity: it must be relatively stable, patterned and predictable. Second, the behavior in question must be intentional: the result of the purposeful aims of a set of agents. Third, that behavior must be normatively guided: sustained by adherence to a system of rules or norms, of varying degrees of formality or explicitness, compliance with which is expected of participants. Fourth, the structure in question must have determinate and reasonably significant effects on the interests of those who are associated with it. Fifth, there must exist feasible alternatives to some aspects of the structure that would have different effects. We can call these conditions, respectively, *regularity*, *intentionality*, *normativity*, *significance* and *alterability*. In what follows I will term “contexts of governance” those structures that satisfy these five conditions, and the view that structural fairness applies exclusively to those contexts the “governance conception” of structural fairness.¹²² The second way in which my focus here is restricted is that I will be concerned only with one particular kind of structural fairness, viz. the distributive rather than the procedural variety. I am interested here, that is, in fairness regarding the distribution of benefits and burdens across individuals rather than such procedural requirements as transparency, absence of bias, and consistent adherence to established rules in the making of public decisions.

My view is that distributive structural fairness is the type of fairness with which distributive justice is primarily concerned.¹²³ It is also, I suggest, something that we are all familiar with. In particular we are familiar with it as applied to one particular salient structure: the domestic basic structure. However, it is important to keep in mind that it is only one variety of fairness, if a particularly

¹²² This approach loosely follows James (following Rawls), who advocates what he terms a governance conception of justice (2005, 3), of which fairness is seen as a part (perhaps the whole part).

As I understand it, structural fairness applies only to structures that are already in place. This means that the fact that some structure or other does not exist cannot itself be regarded as structurally unfair. In investigating the fairness of some structure, we first identify some form of treatment within that structure, and then ask whether or not it is equitable. We do not identify some form of desirable treatment and then ask how it might be extended to those currently excluded from it.

¹²³ This would explain why many of us feel it inappropriate to speak of fairness in cake-cutting, or in other kinds of small-scale interpersonal relations, as a matter of distributive justice *per se*.

significant one. Although from now on, for economy, I will be referring to distributive, structural fairness as “fairness” *simpliciter*, what I say both about what it involves, and about how it is justified, may or may not extend to other cases, and should be taken with that caveat.¹²⁴

I want to note, before moving on, one final point that will be important in the ensuing discussion. This is the fact that the distributive outcomes that are implied by the norms of reciprocity and non-discrimination are apt to vary, according to the particular context of governance at issue. Three of the more prominent possibilities are the following:

i. *Equality*. Sometimes, if a given context of governance is to satisfy the norms of reciprocity and/or non-discrimination, it must ensure a degree of equality in certain goods across individuals. Many arguments for material egalitarianism within the state are based on arguments from fairness of this kind. The standard non-discrimination variant goes as follows. There exists a range of alternative ways in which basic social and economic institutions might be arranged, each of which will have different implications for the distribution of standard goods across the population. There is no reason to think that any individual has a prior claim to an index of standard goods that is greater than that of any other individual. Therefore, if we are to ensure that our society does not discriminate, in its basic structure, against some of its members, we ought to aim for an egalitarian distribution. One version of the reciprocity variant, on the other hand, goes thus. In complying with the laws of their state, those at the lower end of the distribution of standard goods often suffer significant burdens, which redound to the benefit of those who are much better off.¹²⁵ If the better off are not to free-ride on the sacrifices of the worst-off, they ought to be prepared to make sacrifices of their own. One attractive way to do this is to arrange the basic structure of society so as to ensure that the index of standard goods held by the worst off is, even if lower than that of others, at least as acceptable to the worst-off as it possibly can be (Rawls 1971). Again, this argument gets us to a degree of material egalitarianism.

ii. *Specific goods*. Fairness might require, in some contexts, the guarantee of certain specific goods. One situation in which such requirements are plausible is where the provision of a specific good or set of goods is a condition of full and effective participation in some cooperative practice. To take the domestic example again, if a society is to be fair in its basic structure, its members will at the very least require access to some basic necessities in order to avoid being taken advantage of by their better-off fellow members. If this is so, there will be

¹²⁴ I should mention that I will here also be exclusively considering “first-order” rather than “second-order” questions of fairness. Murphy uses this terminology to distinguish between “a concern with a fair distribution as in itself a moral aim, and a concern with a fair distribution as a (moral) condition on a group’s pursuit of some other aim” (2000, 105) (see fn 118 *supra*).

¹²⁵ One benefits from not having one’s car stolen, of course. But, as van Parijs (1995) has emphasized, one also benefits from the fact that other people fill undesirable positions in the labor market – including, in a less than full-employment economy, that of no labor at all – that one might otherwise have had to fill oneself.

an additional fairness case, beyond that founded on decency, for the prevention of absolute deprivation and some specific forms of disadvantage.¹²⁶

iii. *Something in between.* In some cases fairness might require not the guarantee of a specific good or set of goods, nor the securing of a significant degree of equality in goods across individuals, but rather something intermediate between the two. Cohen and Sabel (2006) claim that, within certain associative contexts, a norm of what they term “inclusion” imposes distributive requirements that go beyond the satisfaction of basic human needs, while nonetheless stopping short of the demands of egalitarianism. This norm of inclusion requires that people be treated “as members, whose good counts for something”, and is violated when people are left out: “treated by consequential rule-making processes as if—beyond the humanitarian minimum owed even in the absence of any cooperation—they count for nothing”. Where distribution is concerned, we are told, inclusion requires that people get “an acceptable share, decent opportunities or reasonable improvements”. While this will presumably result in a distribution of goods that is more equal than that which obtains where the requirement is not satisfied, the increase in equality is a side effect rather than the goal. We can point to two main reasons why fairness might require such intermediate distributive requirements within some contexts of governance. First, it may be that substantive egalitarianism is not in fact an accessible institutional option in the context at issue. Second, an equal distribution in the case at hand might in fact violate the norms of non-discrimination or reciprocity.¹²⁷ Distributive equality will be required by the norm of non-discrimination only when the claims of individuals to a given set of standard goods are in fact equal. In some contexts, this will not be the case: perhaps because some have been more closely associated with the production of the goods at issue than have others, or because a morally acceptable system of legal rights has assigned prior entitlements to those goods that ought to be respected. Similarly, if some contribute more to a cooperative venture than do others, reciprocity may require that the former also gain more: that the inequality of the contribution be reflected in the inequality of the goods distribution.

5.3 Why fairness matters

¹²⁶ In saying this, however, we need to keep in mind the scope restriction on structural fairness (see fn 122 *supra*). This additional fairness reason will apply only to individuals who are already at least partly “in the game”. What is unfair in such cases is that some people who are participating do not have enough resources to avoid being taken advantage of, not that some are not participating at all.

¹²⁷ This is not the line that Cohen and Sabel themselves have in mind. They explicitly deny that the norm of inclusion is derivative from the idea of non-discrimination, writing that “the concern expressed is not with a failure to treat [the worst-off] as equals, owed equal concern, status, and opportunity”, and that no “assumption that all inequality requires an especially compelling justification” is at work. Nor is reciprocity explicitly at issue (or even fairness, for that matter). I am not sure what is to be gained from treating inclusion as an independent norm in this way, once we divorce distributive equality (in outcome) from equal consideration, as I am doing in this section.

The preceding discussion has presented an account of the nature of structural fairness, and a suggestion of the range of distributive outcomes that it might imply. Utilitarians, as much as anyone else, are able to accept such an account, and to point to institutions and practices as unfair on its basis. Where utilitarians are sometimes thought to come into difficulties is in regard to the moral import of a diagnosis of unfairness, once established. It is hard for some to accept that appeals to fairness can matter to a utilitarian. Part of the reason for this is that norms of fairness seem to have the wrong *form* for that purpose. Fairness differs from decency in three respects that make it seem much less amenable to utilitarian co-option than the latter goal. Fairness, first, makes no explicit reference to welfare, employing instead the distinct, and not especially welfarist, notions of benefit and burden. Second, unlike decency, fairness is essentially comparative: it is the relation between the treatment received by two or more individuals that determines whether or not they are being fairly treated. Third, again unlike decency, non-discrimination and reciprocity do not directly call for any specific distributive outcome: they look more like a formal constraint on the way in which goals might be pursued than themselves a state of affairs at which we might aim.

I think that we should not be misled by the surface structure of norms of fairness into assuming that the latter are incapable of being incorporated into the repertoire of utilitarianism. The way forward here involves thinking of fairness not as a set of abstract principles, but rather as a kind of social practice. Reasons to be fair, for a utilitarian, will spring from reasons to promote that kind of practice. From a consequentialist perspective, these reasons will reduce to the valuable outcomes that such a practice generates, and/or the disvaluable outcomes that it prevents.

I think that we can connect fair treatment to two distinct sorts of outcome that utilitarians should value. The first of these is the *promotion of socially beneficial cooperation*. A (confirmed) expectation of fair treatment tends to encourage sustained participation in cooperative projects. When people get a fair share of the gains of collective activity, they are much more likely to willingly participate and reciprocate than to defect or become hostile. In explaining this tendency, we can point to a plausible fact about motivation. It is hard to sustain commitment to a collective activity when there is not much in it for you. Fairness gets around this problem by usually ensuring that there is at least something “in it” for everyone involved. Its non-discrimination element ensures that, except in special cases, a minority will not take all of the gains or avoid all of the costs, and its reciprocity element ensures that, on balance, those who give will also get. The increased cooperation that is thereby promoted is plausibly of significant utilitarian value. Some welfare-enhancing activities cannot be done at all in the absence of cooperation; many others can be done faster, more effectively, more easily and/or more enjoyably in its presence.

This argument might be rejected in one (or both) of two ways. One could deny the empirical claim that fair practices promote cooperation, or one could deny

that this fact, even if true, properly accounts for our commitment to fairness. Although the empirical claim seems very plausible to me, I acknowledge both that it is controversial and that more evidence than I can muster here would be required to fully back it up. Two things, however, can be said in its defense. The first is that some empirical research does suggest a correlation between cooperation and increased likelihood of fair treatment, or between unfair treatment and reduced cooperation. One finding is that people appear more likely to act fairly towards others in laboratory contexts when their partner is given a role as an active participant or cooperator rather than as a passive recipient.¹²⁸ Another suggestive, real world, example is provided by a study of industrial relations at Firestone tire plants in the mid-1990's (Krueger and Mas 2004). A 1994 proposal to deviate from a longstanding industry-wide bargain with labor unions in a way detrimental to workers, even while the company was enjoying a profit increase, resulted in labor strife at an Illinois plant, followed by a marked increase in consumer reports of defective tires from that plant, in comparison with other similar plants where labor strife was absent. The second, more backhand, defense of an appeal to the connection between fairness and cooperation points to the fact that at least some non-utilitarians (in particular, social contract theorists) help themselves to the same idea in the course of constructing their theories of justice.

Although I think that the cooperation-fostering argument does provide an important part of the utilitarian case for fair practices, it cannot provide the whole story. This is because, even if fairness sometimes promotes cooperation, it clearly is not always necessary for that end. Often we can get people to cooperate purely by either coercing them, or by appealing directly to their self-interest. Therefore, if the argument currently under view were the only one available, utilitarianism would only support practices of fairness in some contexts – and perhaps not even some of the ones we most care about. (Structural unfairness in domestic politics, for instance, does not in many cases stop people cooperating with the state). Especially in cases where participation is non-voluntary, then, utilitarians who want to co-opt fairness need to supplement the foregoing argument with some other reason for caring about fair outcomes. That second, supplementary, reason, I now want to suggest, is the

¹²⁸ The most well known laboratory experiment in this area is the “Ultimatum Game”, in which one player suggests a one-off division of a sum of money between him/herself and another player that the latter is free to either accept or reject. Pure self-interest suggests that the proposer ought to suggest the smallest possible amount, given that identities are hidden and no repeat round is in the offing. However:

....Time and again, across hundreds of experiments in highly heterogeneous cultural circumstances and with amounts ranging from one hour's to one week's local wages, observed offers are substantially higher and, even so, rejections are often observed. In many experiments the modal (most frequent) offer is actually at 50%. (World Bank 2005, 80, citing Henrich *et al.*, 2004).

The interesting fact that I refer to in the text is that in the “Dictator Game” variant, when the receiver has no power to reject the offer, positive offers are both rarer and smaller.

fact that fairness, in at least many core cases, has *broadly egalitarian* implications. As we have seen, a tendency towards equality is built into the underlying notions of reciprocity and non-discrimination when they are applied to some salient contexts of collective activity. Sometimes those norms require significant equality in outcome; often they place limits on the more significant departures from it. If this is so, in many cases we will be able to employ the desirability of equality (or the undesirability of extreme inequality) as an argument for fairness.

This move of course shifts the burden of argument to that of showing why utilitarians - welfare consequentialism's committed sum-rankers - should care about equality. The answer is that, in some cases, inequalities in resources, broadly construed, inhibit welfare maximization. This point was pressed in regard to the case of domestic politics in Chapter 1. There I suggested that considerations relating to the diminishing marginal utility of resources, the dynamics of social-political relations, and (perhaps) the determinants of economic growth together provide a utilitarian case for limits on inequality of resources. If this claim is correct, it suggests that appeals to principles of fairness in domestic politics (of the kind mentioned in the previous section) have utilitarian support. Can we extrapolate from this case in order to generate a quite general utilitarian argument for fairness on the basis of considerations of equality? Although it might make the project of defending utilitarianism easier if we could generate such an argument, I think that a simple extrapolation would be too hasty. This is because the egalitarian arguments given in the domestic case are predicated on some fairly specific features of the domestic context. Some of those arguments depend on the presence of a particular set of social-political relations, others depend on factors of practical feasibility and institutional capacity that may be absent elsewhere. If we are to employ the fact of diminishing marginal utility or the possible equality-growth connection to egalitarian effect, for instance, we need to be able to show that the act of redistribution will not itself, through administrative inefficiencies or incentive effects, soak up all of the potential gains. In the domestic context this seems possible at least up to a certain extent; in other contexts it may not be.

The moral here is that utilitarians should admit that not all cases in which the norms of non-discrimination and reciprocity apply, as a conceptual matter, are necessarily going to get utilitarian approval. Utilitarians cannot give those norms a blanket endorsement, but need to examine their attractiveness on a more piecemeal basis, as applied to specific associative contexts. They need to ask of each such context not only "does fairness apply here?", but also, if it does, "is this the sort of fairness that utilitarians should care about?"¹²⁹ The lesson of the preceding discussion is that the utilitarian case for caring about distributive

¹²⁹ It is important to emphasize that this question is being proposed as a justificatory test, not as a decision procedure. Utilitarians should not, that is, advocate that we consider, when faced with the option of performing a particular act of fairness, whether or not acting fairly in that particular instance would promote socially beneficial cooperation and/or a desirable form of equality. Such a suggestion would forcefully raise a variant of the "instability" objection mentioned below.

fairness is going to be stronger in contexts of governance where a) participation is voluntary, and/or b) equality of the distribund at issue is both desirable and feasible.¹³⁰

To sum up, I have argued that utilitarians have reason to endorse fairness insofar as it promotes socially beneficial cooperation, and/or results in a tendency towards equality (in standard goods, or in some other distribund) that has an independent utilitarian rationale. I find this argument for fairness satisfying, but non-utilitarians are likely to raise against it variants of the three standard forms of objection to indirect utilitarianism that I listed at 1.2 *supra*. They will claim, first, that the argument is a case of *wishful thinking*, given that fairness does not necessarily or even usually serve utility. They will claim, second, that it offers us the *wrong reasons* for caring about fair treatment: that fairness is not fairness at all if it is but the servant of utility. And they will claim, third, that this account renders the case for being fair in any given instance overly *unstable*. The presumption that fairness will contribute to utility is defeasible: when acting fairly conflicts with maximizing utility, utilitarians will have to let their commitment to fairness slide.

I have taken some of the wind out of the first of these objections, by admitting that fairness should only be endorsed by utilitarians in some associative contexts. The second objection, in my view, borders on begging the question. It is certainly debatable that common sense reflection shows a utilitarian justification of fairness to be inadequate. While utility maximization is far from at the forefront of everyday talk about fairness, many deliverances of moral intuition are best interpreted as operating on the surface of things rather than as weighing in on the ultimate authority of moral reasons (c.f. 1.2 *supra*). Although the instability objection might seem initially more troubling than the preceding two, I think that it can be successfully answered in two stages. First, one bites the bullet. Yes, sometimes it is going to be right, on a utilitarian view, to act unfairly. But this result is not all that troubling. Many non-utilitarians agree that reasons of fairness are not always decisive in determining how one ought to act. Second, one claims that, in contexts where fairness is morally useful, the bullet will only very rarely need to be bitten. This is because the longer-term results of a permission to act unfairly whenever the immediate utility

¹³⁰ Given the significant role played by the desirability of equality in this argument, it might be wondered why utilitarians should make this shuffle through fairness, rather than directly constructing principles of equality instead. The answer is that a commitment to fair treatment has proven a potent tool, across both centuries and continents, for generating outcomes that utilitarians should care about, and utilitarians ought to take this fact into account when constructing their secondary principles. Compare Sidgwick:

[The utilitarian] will naturally contemplate [the established morality] with reverence and wonder, as a marvelous product of nature, the result of long centuries of growth, showing in many parts the same fine adaptation of means to complex exigencies as the most elaborate structures of physical organisms exhibit: he will handle it with respectful delicacy as a mechanism, constructed of the fluid element of opinions and dispositions, by the indispensable aid of which the actual *quantum* of human happiness is continually being produced... (1907, 476)

calculations (appeared to) so direct would undermine the practice of fairness, and with it the benefits in the form of social-cooperation-with-an-egalitarian-slant that I have been underscoring. If utilitarians want those benefits, it would be very unwise for them to be half-hearted about the importance of fair treatment in associative contexts where such treatment matters.¹³¹

5.4 Is global politics “fairness-apt”?

I will assume from now on that fairness ought to matter to utilitarians, in at least some contexts of governance. The question that I am interested in now is whether it ought to matter in the area of global politics in particular, and, if so, what it implies there. I will begin, in this section, by discussing some common, quite general, reasons for denying that global politics is “fairness-apt”, and move on in the next section to an examination of specific global or international contexts of governance in which fairness claims might arise.

There is resistance in some influential quarters to the claim that structural fairness applies in the international or global context. Most theorists who evince this resistance agree that fairness applies to domestic politics. They are therefore obliged to claim that there is something distinctive about global politics that prevents the application of fairness there: they need to provide, as Caney puts it, a “disanalogy argument”: indicating “a morally significant property that exists at the domestic level (and hence accounts for the applicability of a moral principle there) but which is absent at the global level (and hence accounts for the inapplicability of the same moral principle there)” (2005, 270). And they need to show this property to be absent in *each* context of governance that we find at the global or international level. If we are to argue instead that fairness does apply to global politics, we need to either deny that the domestic-global disanalogy exists, or rather deny that the property selected is a necessary condition for the application of fairness. In what follows I will call these denials of the “disanalogy claim” and denials of the “relevance claim”, respectively.

The following are three of the more common disanalogy properties highlighted in the philosophical literature, as well as in common discourse on the ethics of global distribution:

¹³¹ A helpful way of understanding the utilitarian position on compliance with constraints such as fairness or rights even in cases where such compliance seems to conflict with local utility maximization is in terms of what Parfit calls “rational irrationality”. As Sumner explains, this is:

...conduct which, though on this particular occasion it frustrates your basic goal, is none the less part of the best long-range strategy available for achieving that goal...if you choose to act in a way which disserves your basic goal you have a good reason for doing so. And that is all that is necessary for you to treat the existence of rights [or fairness] as independent reasons for action. (1987, 197)

a. *Absence or weakness of institutions and governing agents.* Some claim that global politics differs from domestic politics in a way relevant to fairness insofar as the former lacks an all-encompassing regulatory structure, and an agent to reliably enforce compliance with the rules governing that structure. Thus Miller writes, in concluding his case against distributive justice at the global level: “above all there is no common institutional structure that would justify us in describing unequal outcomes as forms of unequal treatment” (1999, 190).

This argument relies upon a variant of the governance conception of structural fairness advocated earlier. If we accept that conception, as we ought to, the relevance of the disanalogy property that the argument selects is not in doubt. But if the relevance claim goes through here, the disanalogy claim does not. For, *contra* Miller, there *are* common institutional structures in global politics, and increasingly many of them. Among the more prominent instances are: i) a multilateral trading system, incorporating a set of rules regarding permissible tariffs, subsidies, quotas and agreements, and a body for resolving disputes over the implementation of those rules; ii) an international banking and financial structure, incorporating a set of rules regarding the global exchange of capital, and a body for ensuring currency stabilization; and iii) a range of decentralized forms of international regulatory structures (sites of rule-making and governance) directed at specific issue areas other than the preceding.

Certainly, these structures are significantly different from the forms of regulatory institution with which we are familiar in domestic politics. Two of the more striking differences are the following. The form of governance that we see at work in these structures is not governance of the centralized, hierarchical, command-and-control type familiar from the state. Instead it is both cooperative and reflexive in nature. “Regulators and the regulated exist on the same plane” (Cassese 2005, 669), in the sense that parties collectively decide to submit to a common framework of rules, and extend invitations to cooperate to others in order to extend the scope of the framework. Second, international regulatory systems demonstrate, in both their formation and operation, a significant degree of dynamism and fluidity. Different types of international regime are often formally intertwined in a network structure, or rely on informal interconnections: sometimes “standards established by one organization become binding rules by virtue of the force given to them by another organization....[and] some regimes “lend” their institutions to others for the resolutions of disputes” (Cassese 2005, 675). Such interconnections tend to develop spontaneously and incrementally, again in the absence of centralized control.

But to say that these institutions are different in important ways from the state, is not to say that they are not fairness-apt. People who make the disanalogy argument at issue are afflicted by a peculiar fixation on the state: an assumption that governance does not count as governance unless it exhibits the centralized, hierarchical and fixed structure that is characteristically associated with that particular institutional form. But this assumption is unwarranted. The same

goes for the claim that global regulatory structures necessarily lack a means of effective enforcement. Pressure to comply with the rules embodied in the regulatory structures referred to above is in many cases quite impressive.¹³²

b. *Voluntariness*. It is sometimes claimed that fairness does not apply to global politics because participation in the latter is voluntary, in a way in which participation in domestic politics is not. As Risse puts a variant of this claim: “[W]hile there undoubtedly is...a global order, it is unclear whether such reasoning shows that this order provides an appropriate background for redistributive claims among societies. Many of these [global] relationships are economic, and to the extent that they are political, they have been (more or less) voluntarily accepted by the respective states” (2006, ref).

Again, a denial of the disanalogy claim is appropriate here. Non-voluntary institutional structures do exist at the global level. Perhaps the most significant example is the state system, a form of global organization that was initially imposed by the West on the rest of the world, and is now not open to serious challenge by anyone. The claim of involuntariness is admittedly more debatable in the case of international institutions such as the World Trade Organization. Wenar writes: “The WTO presents itself as an international “fair and stable trade club”, accepting applications from anyone who agrees to the club rules. To assent that there is coercion here, one should want to be precise about who is threatening whom and why these are threats and not offers” (Wenar 2001, 79). However, some make the claim of involuntariness in this case also, given that, as Beitz notes, “participation on the only terms available may be practically inescapable” for poorer countries (1999, 279).

In any case, I do not consider it especially important for present purposes to settle the question of whether or not participation in a given regulatory structure at the global level is voluntary or coercive. This is because we should deny the relevance claim on which the disanalogy argument at issue is based. The fact that participation in some context of governance is voluntary does not render fairness inapplicable to it. We think, for instance, that members of the Loretta Lynn Fan Club ought to be treated fairly by their executive, whether or not they are free to leave at will. What involuntariness does plausibly do is render any unfairness present morally more troubling. Where unfairness taints a voluntary relation we have two options open to us: we can terminate the unfairness or terminate the relation. Where unfairness taints an involuntary relation, on the other hand, we have only the first of these options. While this fact may explain why the elimination of the unfairness appears more pressing in the second case, however, it does not show that the fact of involuntariness is relevant to the unfairness itself.

¹³² One significant development here is the increase in global administrative courts (often called ‘panels’), designed to settle disputes in an independent fashion via adversarial procedures (Cassese 2005, 692).

c. *Absence of motivation to act fairly.* It is sometimes suggested that the motivations supporting fair behavior at the level of domestic politics are much weaker, or even lacking, in global politics. In a variant of this argument, Goodin notes that one central motivation for acting fairly derives from the uncertainty that we all experience regarding our future social or economic position (1992, 45). Practices of reciprocity are based on the idea that sacrifices made by some now will be compensated for by return sacrifices made by others in the future. If one had the secure expectation of being comfortably well off for the indefinite future, it would be hard to see why (as a matter of self-interest) one would feel moved to make the initial sacrifice needed to get such practices going. It is the fact that the majority of us do not have this secure confidence that makes us willing to undergo costs favoring compatriots now, as a form of diffuse insurance against the future. Goodin suggests, however, that it is harder to extend this uncertainty model of moral motivation to the international setting (1992, 61). Since, for most of us in the developed world, the idea that we might one day be reduced to the state of a destitute Ethiopian is simply not credible, one standard motivation for making the initial sacrifice in the domestic case is not present.

The relevance claim should be resisted here, for three reasons. First, note that the above argument implicitly assumes that it is up to the advantaged to make the first move where the initiation of a reciprocal obligation is concerned. But in some cases it is in fact the less advantaged who do so, by making sacrifices or undergoing costs (voluntarily or not) that benefit the advantaged. Thus, even if we think that the less advantaged will make no sacrifices for us in the future, it might nonetheless be the case that they already have made such sacrifices, and are hence owed something in return. The motivation to carry through on this obligation will not be one of uncertainty regarding one's future position, certainly. But that is not a problem (this is the second point), since there is plausibly another source of motivation to draw upon here. This is the basic, more clearly moral, desire not to exploit those who are dependent on, or vulnerable to one.¹³³ Most of us find this sort of relationship at least uncomfortable, and are inclined to act to ameliorate it. A third reason why the above argument fails the relevance requirement is its assumption that fairness is exclusively concerned with reciprocity, rather than also with non-discrimination. The latter norm lacks the emphasis on mutual advantage integral to the reciprocity variant, and as such is not as vulnerable to any failure of Goodin's "uncertainty model" at the international level.

We do not, then, need to rely on the fact of uncertainty about the future position of the global advantaged in order to identify claims of fairness internationally. But even if we did, the disanalogy claim would fail, as is apparent when we shift

¹³³ This is something that Goodin himself goes on to mention, although he again has doubts about how far it can be extended internationally (see 1992, 77). I am a little more optimistic. Another source of motivation for fair behavior that is arguably strongly at work at the domestic level, although clearly is weaker at the international level, is a sense of solidarity with others, where this involves both a sense of similarity of some kind, and a sense of being co-involved in a form of shared endeavor.

our focus not to interactions between the global affluent and the global “radically poor”, but to interactions between parties less divergent in advantage. There are now plenty of opportunities for mutually beneficial cooperation at the international level, where uncertainty about the future needs of each of the parties involved often will have motivational force.

I cannot here cover every source of general doubt concerning the application of fairness internationally. But if your own source remains untouched, consider the following facts about the conditions of contemporary global politics. The global political economy is shaped and sustained by a huge number of rules a) on an extensive and diverse range of subjects, b) made, elaborated and applied by a network of established global and international institutions, c) in a process of extensive cross-border cooperation d) aimed at shared purposes, e) resulting in relations of dense interdependence between distinct political communities, f) with significant consequences for the welfare and freedom of action of the world’s population, g) consequences that would have been significantly different if other available rules had been applied instead. In other words, global politics satisfies the conditions of regularity, intentionality, normativity, significance and alterability earlier argued to be necessary and sufficient for the application of structural fairness. I think, on the basis of these facts, that there is reason to take claims of fairness in the arena of global politics very seriously.

5.5 Fairness in global politics

I suspect that much of the resistance that we find to the idea that norms of fairness might apply to global politics derives not from arguments of the kind canvassed above, but rather from resistance to certain claims about what fairness would require in global politics, especially in regard to distributive outcomes. Some of this resistance, in turn, can arguably be traced to the dubious assumption that what fairness requires distributively in one context of governance it also requires in all others. Say, for instance, that you think, by extension from the case of domestic politics, that fairness always requires some quite extensive form of material egalitarianism. And say that you also think that a quite extensive form of material egalitarianism is not called for at the global or international level. You may then find yourself inclined to deny that claims of fairness are apt at all in regard to global politics. If we are to fully alleviate doubts of this kind, we need to move on, finally, to the center of the action: the question of what distributive fairness substantively requires in the various arenas of global governance.

Since I cannot consider every potential site of global distributive fairness here, my strategy will instead be to discuss a few of the more prominent candidates. Hopefully this approach will offer some pointers in the direction of how the remaining cases might be addressed. For each institution or practice discussed, I will ask the following set of questions. Is the governance condition satisfied by the structure selected (is that structure “fairness-apt”)? If so, how do the norms of reciprocity and non-discrimination apply to that structure? (Which goods do they apply to, and which distributive outcomes do they require?) And, finally –

to return to the conclusion of 5.3 *supra* - is the form of fairness at issue of the sort that utilitarians should care about?

5.5.1 The “Global institutional scheme”

Some theorists have claimed that we ought to consider the global order, taken as a whole, as a single subject of fairness. This is the route taken by “cosmopolitan egalitarians” such as Beitz (1979) and Pogge (1989) (see 3.2.2 *supra*). Both take the existence of a single, all-encompassing global institutional scheme to generate fairness-related requirements of global resource distribution. In particular, they hold that fairness requires that that scheme satisfy the Rawlsian difference principle.

Many of us do not think that the global order taken as a whole does have these strong egalitarian implications deriving from considerations of fairness. This might be because we do not consider the global order to be fairness-apt (perhaps for the general reasons given earlier); because we are dubious of the idea that the domestic and global contexts are sufficiently similar to merit the same distributive principle (Rawls 1999); or because we cannot see how such a principle would leave room for domestic principles of distributive justice (Freeman 2006). My own chief reason for resistance differs from all of these and can be briefly stated. I am unconvinced that there exists a single global institutional scheme in the sense that Pogge has in mind: *viz.*, a “comprehensive and reasonably self-contained system of social interaction” (1989, 21) with a basic structure “distribut[ing] fundamental rights and duties and determin[ing] the division of advantages from social cooperation” (Rawls 1971, 6). While there is certainly much interaction, cooperation and distributively consequential regulation going on on the international plane, the spheres in which such activities occur are insufficiently integrated (taken altogether) for claims about a single, all-encompassing, governed global system to be anything other than loose talk. And if we cannot identify a single global context of governance, we cannot identify a norm of fairness to apply within that context.¹³⁴ The governance condition fails at the fully global level, and therefore fairness does also: there is nothing at that level for the norms of reciprocity or non-discrimination to apply to.

5.5.2 The Global Property Regime: Natural Resources

If what I have just argued is correct, any claims of fairness that arise at the global level will have to arise not out of the “global basic structure”, but rather out of contexts of governance more limited in scope and purpose. One set of candidates for the latter role are *property regimes*, of which there now exist two at the global level. One (which I discuss at 6.2.1) is the system of intellectual property rights being developed under the WTO’s TRIPS agreement. The other,

¹³⁴ As noted at fn 56 *supra*, this point clearly provides a further reason for denying that direct transposition of principles of justice from the domestic to the “global” basic structure is a promising strategy.

and the one on which I will focus here, is the system of rights over land and other natural resources (such as oil, timber, air and water) that is incorporated in the modern state system. This latter regime (henceforth the “global property regime”, or GPR) involves a parceling up of the world’s surface amongst distinct groups of people, and a collection of norms concerning rights to the resources found within (including below and above) those parcels. The regime is sustained and enforced by states, collectively, by means of compliance with and appeal to international law, as well as the maintenance of extensive operations of border protection.

Is the GPR a plausible subject of norms of fairness? It certainly involves regular, intentional, normatively guided and consequential collective behavior. But doubts might arise in regard to the remaining condition that I earlier claimed to be necessary for the application of structural fairness: the availability of feasible alternatives. Given that there is at this point no agent realistically capable of dividing up the world’s territory as a whole anew (i.e. as opposed to making some more limited, local adjustments), it might be claimed that any reasons to object to the current division cannot be reasons of fairness.

This doubt can be eased by reference to a distinction between “control rights” and “benefit rights” to natural resources. On the modern conception of property, which we owe to the legal realists, ownership is not a unitary notion, but rather a “bundle” of rights: a collection of diverse legal entitlements each covering distinct aspects of the owner’s relationship to the object owned. Conceiving of property in this way allows us to distinguish between (among other things) rights to *control* or use natural resources, and rights to *benefit* or profit from them.¹³⁵ And this distinction allows us to see that the GPR does in fact satisfy the alterability condition on structural fairness. It is true that the basic distribution of control rights over the world’s territory and other natural resources is by now so deeply entrenched as to be exceedingly difficult to alter. But it does not follow from this that the current distribution of *benefit* rights over that territory admits of no feasible alternatives. To see this, note that, under the current regime, each state has full benefit rights with respect to the natural resources found within its territory (and, consequently, no benefit rights to the natural resources found within the territory of any other state). This arrangement contrasts with, among other options, an alternative arrangement proposed by Pogge that incorporates a “global resources dividend” or “GRD” (Pogge 2002). On the latter proposal, countries would retain eminent domain over their allotment of the world’s limited natural resources - so that foreigners would not have any control rights to determine how those resources were used - but some small portion of the economic value derived from them would be taxed and used to help improve the situation of the global poor. If, as seems plausible, such a measure is a practical possibility, it shows that the current GPR is

¹³⁵ These rights can themselves be broken down. One might, for instance, introduce a temporal dimension into control rights (as when one leases an object for a limited period of time), or distinguish different aspects of control; or one might distinguish different forms or extents of benefit. For discussion, see Grey 1980.

maintained in the presence of feasible alternatives, and that the alterability condition on structural fairness is satisfied.

I conclude from the preceding that the GPR in natural resources is fairness-apt. Our question, then, is what precisely fairness in that regime would come to. A direct application of the norm of non-discrimination requires that if the GPR results in an unequal distribution of benefits across individuals (net, i.e. taking into account burdens also imposed), this departure from equality must be given a special, non-arbitrary justification. A direct application of the norm of reciprocity requires that if, while participating within the GPR, some incur costs in order to produce benefits for others, the latter ought to be prepared to incur similar costs in order to produce similar benefits in return. What do these norms require, in terms of substantive distributive outcomes?

They do not, I think require that the benefits derived from natural resources be distributed equally across the world's individuals. This is so for two reasons. First, the norm of non-discrimination is concerned only with benefits that are created by the GPR. But only a portion of the economic value that a given country derives from the natural resources found within (and around) its territory is attributable to that regime. This is because much of the benefit derived from natural resources is so derived only in the presence of contributing factors such as labor and well-functioning domestic political and economic institutions: factors not produced or regulated by the global property regime *per se*.¹³⁶ Second, if a substantially egalitarian global property regime is to be required by fairness, that regime must be a genuinely feasible option. But, given the state of global governance, it quite clearly is not: there is no sufficiently powerful (and accountable) institutional agent at the level of the globe whom we might call upon to implement it.¹³⁷

Since it is difficult to know how exactly to quantify the benefits at issue, we cannot be too precise here. I think, however, that the above considerations suggest that there is something to be said for a focus on minima. I propose, then, the following principle:

¹³⁶ We can see this from the fact that the economic prosperity of a population is very poorly correlated with the amount and quality of natural resources that it controls. Several countries (including the Congo, Nigeria, Venezuela, Brazil, Myanmar, Iraq and the Philippines) are both resource-rich and poverty-stricken.

¹³⁷ A distinct argument against a fully egalitarian GPR concerns its undesirability. Land and other natural resources differ from other sorts of property, such as artifacts or ideas, in a highly significant way, by virtue of their intimate connection to the modern conception of political rule. It is a distinctive feature of that modern conception that public authority tracks territoriality: the scope of the former is defined by relation to a discrete, generally spatially contiguous, portion of the earth's surface. (This system of rule contrasts with that employed in medieval Europe, which "was structured by a non-exclusive form of territoriality, in which authority was both personalized and parcelised within and across territorial formations" (Ruggie, 1993)). This means that the question of who is to control and benefit from the land in which a political community is located runs up directly against issues of sovereignty and collective self-determination. The prospect of a fully egalitarian global property regime in natural resources looks highly undesirable on grounds of the latter, in a way in which the alternative proposal that I offer below does not.

Fair Exclusion. The global property regime in natural resources will be fair only on the condition that persons do not fail to attain decency by virtue of being excluded from access to the natural resources of states other than their own.¹³⁸

Once we take into account the points made above against a fully egalitarian global regime in benefit rights to natural resources, *Fair Exclusion* looks compatible with the norm of non-discrimination. We can also understand it as an application of the norm of reciprocity. Consider that a highly exclusive global regime of benefit rights to natural resources imposes significant burdens on those whose own nations provide them with insecure access to an adequate level of standard goods. This is because deprivation of access to the benefits that can be derived from foreign resources blocks off one of the few chances that such people have of attaining decency. Reciprocity requires that those who adhere, at significant cost, to the basic set of rules embodied in the global property regime (*viz*, the global poor) are owed a corresponding sacrifice on the part of those for whom general adherence to those same rules presents a considerable benefit (*viz*, the global affluent). One attractive interpretation of the requisite sacrifice has the global affluent ensuring that the global poor obtain access to the level of standard goods required for a minimally decent life.

If *Fair Exclusion* is to generate substantive requirements in our world, it will need to be shown that failure to attain decency is (at least partly) caused by exclusion from the natural resources of foreign states. If that can be shown, the fact that the entire population of the world is implicated in a fairness-apt global property regime will provide an additional, fairness-based reason for honoring the decency duties advocated in Chapter 4. And (to return to the lesson of 5.3 *supra*), given that the utilitarian argument for those duties is strong, the form of fairness at issue here is quite clearly of the sort that utilitarians should endorse.

5.5.3 The Multilateral trading system

International trade today takes place within a multilateral regime, incorporating i) a set of rules, policies, agreements and standing expectations regarding tariffs, subsidies, quotas and other types of trade-related action, ii) an ongoing schedule of structured negotiations over the development and elaboration of those rules (etc.), and iii) a body for resolving any related disputes and encouraging compliance. The system as we know it today arose out of more general post-war developments in international organization aimed at fostering global peace and prosperity, and is now centered in the World Trade Organization (WTO). The

¹³⁸ I take the title of this principle from Aaron James. His own variant runs: "the state system can only reasonably deprive people of access to basic resources if it also provides adequate means to enjoy the significant benefits of that access" (2006, 712). It is unclear what this principle means. We can assume that by "basic" resources James has in mind natural resources, of the kind that I am concerned with here (although that is not entirely obvious). But the phrase "significant benefits" is obscure. The choice of minima is suggested by James' later emphasis on the unjustifiability of "significant or severe" deprivation of access to basic resources. But this impression is undermined by James' later claim that "as far as the consequences of exclusion are concerned, the issue of equitable treatment...rises, quite aside from whether the deprivation leaves people badly off, in absolute terms" (2006, 713).

general purpose of the regime is to promote liberalization in the cross-border market exchange of goods, capital and (more recently) services.

Doubts about the appropriateness of applying the idea of structural fairness to global politics are perhaps stronger in regard to trade than in regard to any other aspect of international association. Many think that we can ensure fairness in international trade by attending solely to the fairness of individual transactions: where this reduces to such matters as fair pricing, competitive markets, truth in advertising, and absence of desperation bargaining. If all transactions are fair judged against such criteria, such persons think, the fairness of the structure will take care of itself: structural fairness supervenes on transactional fairness. Many of the theorists who make this argument do not take a similar line in regard to domestic markets. In the latter case there is majority acknowledgment that structural unfairness can persist even in the face of perfect transactional fairness (so that, for instance, *contra* Nozick 1974, Wilt Chamberlain is not morally entitled to all of his match earnings, despite their origins in a free and fair transfer from their prior owners). Why, then, should the contrary line be tempting at the international level?

The rationale seems to be the idea that at the international level trade does not take place within the context of an all-encompassing basic structure of the kind that we see at the level of the state.¹³⁹ That is true enough. But this fact will only be relevant to the question under consideration if there do not exist other kinds of structures to which requirements of structural fairness might apply. I suggest that the multilateral trading system as described above is one such structure. It involves regular, norm-governed, coordinated behavior aimed at a common goal (that of mutual economic gain). As such, it is not merely a sequence of isolated transactions, but an ongoing, organized practice, which directs and constrains the actions and expectations of its participants over time. This means that, even if each individual transaction taken within that practice satisfied criteria of transactional fairness, it would remain an open question whether or not the aggregate effects of the practice as a whole were fair. And because the remaining conditions for the application of fairness advocated earlier are clearly satisfied in the case of the global trade regime, this question would not only be open, but also important. The rules, policies and expectations that go to make up the multilateral trading regime are chosen against a backdrop of feasible alternatives. And the choice of those rules, policies and expectations is consequential: the alternatives would result in distinct patterns of burdens and benefits across individuals both within and across borders.

¹³⁹ This is a variant of the argument from institutional lack considered in section 5.3 *supra*. The following passage in Nagel suggests it:

Within our respective societies the contracts and laws on which [a trade] relation depends are subject to standards of social justice. Insofar as they transcend societal boundaries, however, the requirements of background justice are filtered out and commercial relations become instead something much thinner: instruments for the common pursuit of self-interest (2005, 141-2)

I will now argue that reflection on the way in which the structure of the multilateral trading system as a whole distributes advantages supports three distinct principles of fairness for international trade, which I will term *Fair Benefit and Burden*, *Fair Inclusion* and *Fair Return*.

Fair Benefit and Burden.

Fair Benefit and Burden. The benefits and burdens created by the multilateral trading system ought to be distributed equally amongst participants, unless special justification can be given for unequal treatment.¹⁴⁰

This first principle is a direct application of the norm of non-discrimination to the system of international trade. It requires, in practice, two things: that unjustified unequal gains be redistributed across participants, and that unjustified unequal burdens be either prevented or compensated for.

Determining whether or not the multilateral trading system is fair, judged against this principle, requires settling two issues. One is that of precisely which consequences of trade are to count as benefits and burdens for purposes of fairness. Are we to consider solely changes to GDP, or also the further economic or non-economic effects of international trade? A second issue to settle is that of which differences across countries in the consequences thus selected are unfair. Suppose we decide that only changes in GDP are to count. There are three reasons why differential changes in GDP after the commencement of the multilateral trading regime might not be unfair. First, some changes might have arisen entirely independently of participation in international trade. Second, some changes, while directly related to participation in international trade, will derive in part from factors (such as a country's economic system, population size or natural resource holdings) that would have produced inequalities even in the absence of the multilateral trading system. Given that *Fair Benefit and Burden* applies only to benefits and burdens created by the global trading regime itself, such gains are not to enter into the distribuand. Third, *Fair Benefit and Burden* leaves open the possibility that some forms of regime-produced inequalities in GDP gain might have "special justification".

The above questions are difficult to answer, which suggests that the precise distributive implications of *Fair Benefit and Burden* will often be unclear.¹⁴¹ It

¹⁴⁰ This principle is similar to that advocated by James in his 2004: "a given, governable practice is to be organized so that those who do their part receive an equal or otherwise acceptable share of its benefits, and no more than an equal or otherwise acceptable share of the burdens that make those benefits possible" (10).

¹⁴¹ Sykes points to some broadly similar difficulties in interpreting the WTO's "safeguard measures" clause in his 2003 (see fn 113 *supra*). A further difficulty in applying *Fair Benefit and Burden* in practice derives from the fact that different liberalization measures will have distinct distributional impacts on different countries, and on different groups within those countries. (Andersson and Martin (2004) claim, for instance, that while the elimination of OECD agricultural subsidies would benefit net food-producing countries and their farmers, it would hurt countries currently given special preferences, such as the Philippines, as well as net food-importing least developed countries, such as those in North Africa and the Middle East). In

is not unlikely, however, that that principle has been violated. Developed countries have plausibly derived unjustified gains from their extensive farm subsidy programs and recourse to anti-dumping duties: measures that benefit rich farmers in affluent countries while preventing poor farmers in developing countries from benefiting from their comparative advantage in agriculture. And trade liberalization has plausibly imposed more severe burdens on developing than on developed countries, in particular by virtue of its disruptive impact on the lives of the global poor. If the multilateral trading regime is not to continue to violate *Fair Benefit and Burden*, developed countries arguably ought to i) cease their agricultural protectionism, and ii) collectively subsidize transitional protections (e.g. social security measures and labor market adjustment programs) for the poor in developing countries - or, if such measures prove infeasible, consider certain forms of trade protection in those countries non-actionable (c.f. James 2006, 718).

While these examples involve duties to people who are badly off in absolute terms, it is worth emphasizing that *Fair Benefit and Burden* does not cease to apply when participants exceed the threshold of decency. Some forms of unequal gain or burden will be unfair under that principle even when they do not result in, or coincide with, hardship in those affected.¹⁴²

Fair Inclusion

Fair Inclusion. "People affected by trade are to be provided with the material basis for market access to be of real benefit" (James 2006, 711).

James has recently proposed the above as a principle of structural fairness for international trade. He suggests that, when applied to the contemporary global economy, it provides a fairness-based argument for permitting infant industry

evaluating a given rule or policy, then, we need to decide which of it and the available alternatives is most likely, on balance, to satisfy *Fair Benefit and Burden*. This will often be a complex calculation.

¹⁴² The use of food safety regulations in international trade provides a good example. Many developed countries now require as a condition of access to their markets that foreign exporters comply with the food safety regulations elaborated by the International Organization for Standardization. In addition, the WTO Agreement on Sanitary and Phytosanitary Measures requires that members establish equivalence in regulations and regulatory processes between importing and exporting nations. Such requirements impose significant costs on exporters, in terms of the employment of consultants and additional personnel, training and record-keeping. And, importantly, these costs are much greater for exporters in developing countries than for their counterparts in the developed world. (UNDP 2006, 69-71). While many exporting countries lack national food safety standards and therefore need to develop new infrastructure, developed importing nations have that infrastructure already in place, and employ standards on which the IOS standards themselves are closely modeled. A rule that advantages consumers in the developed world by providing them with cheaper and more diverse foodstuffs at the sanitary levels they have come to expect, while imposing uncompensated burdens on producers in the developing world for whom equivalent such standards are much more costly, looks unfair. Whether or not the standards themselves are justified (on health grounds, or as a permissible expression of political autonomy), *Fair Benefit and Burden* plausibly requires that the developed world assist developing countries in carrying the burden of meeting them.

protection in developing countries, and for positive measures of what has come to be known as “trade-related technical assistance” on the part of the developed world. Proposals for the latter currently come in two varieties. The modest form involves financial and technical support aimed at helping representatives of developing countries to understand the principles of international trade and the workings of the multilateral trading regime, and to participate more effectively in negotiations.¹⁴³ The more ambitious form involves assisting developing countries more directly in improving their capacity to compete in global markets. It is this more ambitious form that James advocates. Although he focuses on the need for improved transportation and communications infrastructure, plausibly what is also required for capacity improvement are increases in human capital (especially via improved health and education), more robust legal and regulatory frameworks, dispersion of technology, and a financial sector that can provide capital to the poor at reasonable interest rates. While, as Chapter 4 suggested, it is not clear exactly how, or how much, the developed world can promote such things in developing countries, it is highly likely that it can at least do something.

Two distinct fairness-based arguments can be given for *Fair Inclusion*, both of which draw their force from the independent argument given above for *Fair Benefit and Burden*. According to the first, forward-looking argument, what is troubling on fairness grounds about the fact that some participants in the multilateral trading regime lack the resources to derive real benefit from access to global markets is that this, in practice, leaves them vulnerable to the sort of treatment that undermines the satisfaction of *Fair Benefit and Burden*. Developing countries do not currently have access to the information, skills and material muscle needed to defend their legitimate entitlements against stronger negotiating partners. This means that they are often pressured or tricked into unreciprocated concessions, and do not consider it worth their while to bring legitimate complaints before the WTO’s Dispute Settlement Board. The satisfaction of *Fair Inclusion*, via the measures of trade-related assistance mentioned above, would help to prevent such unfair agreements or failures to redress injustice from occurring.¹⁴⁴ The second argument for *Fair Inclusion* looks to the present and past rather than the future. On this second line, the

¹⁴³ Currently, many Least Developed Countries cannot afford to maintain delegations in Geneva; when delegations can be maintained, they are chronically understaffed in comparison to those of OECD countries. Developing countries are also often too poorly resourced to prepare for and argue cases at the WTO’s Dispute Settlement Board with the thoroughness and expertise of OECD countries. The Integrated Framework for Trade-Related Technical Assistance to Least Developed Countries, launched in 1997, has so far had little impact, largely due to inadequate funding (UNDP 2006, 138).

¹⁴⁴ We can think of this as an instance of the type of case, mentioned in section 5.2.2 *supra*, in which the securing of certain goods is a precondition of effective participation in a context of governance. Although this argument is most naturally applied to the modest form of trade related technical assistance, it can also be extended to the more ambitious form, given that even a country that maintains a well-functioning delegation in Geneva and has the resources and expertise to pursue disputes at the DSB may find itself pressured into unfair concessions, merely because its trading partners are a great deal better off.

problem with the lack on the part of developing countries of the material resources needed for beneficial access to world markets is not that it tends to *lead* to unfairness. Instead it is itself unfair, insofar as it represents a violation of *Fair Benefit and Burden*. The fact that some participants in the international trading regime are not yet in a position to genuinely benefit from that regime, whereas others certainly are, suggests that the benefits and burdens of that regime have been unfairly distributed. Trade-related assistance is, on this line, a means not to prevent unfairness, but rather, more directly, to redress it.¹⁴⁵

While I think that each of these arguments provides a *prima facie* case for *Fair Inclusion*, if that case is to be made airtight a number of things will need to be shown. Where the first, forward-looking, argument is concerned, it will need to be demonstrated that there are not better ways of securing the desired outcome than equalizing power imbalances by material means. In at least some cases the risk of unfairness at issue ought to be able to be reduced not by trade-related technical assistance, but instead by the strengthening of procedural safeguards and/or a commitment on the part of the better off to stop driving the vulnerable to the wall. Where the second argument is concerned, it will need to be shown that *Fair Benefit and Burden* has indeed been violated: that the worse-off participants in the multilateral trading regime have in fact been taken advantage of, or discriminated against. As suggested in the previous section, this will involve, among other things, showing that the inability of Least Developed Countries to genuinely benefit from market access does not derive from factors that are independent of the multilateral trading system itself, or does not have some form of non-arbitrary justification.

Fair Return

Fair Benefit and Burden and *Fair Inclusion* are both, I have suggested, best understood in relation to the norm of non-discrimination, the first as a direct application, the second as a derivation from the first. But several complaints of unfairness in relation to the global trading regime are more naturally understood in terms of the norm of reciprocity. As we have seen, reciprocity requires that if some incur costs in order to produce benefits for others, the latter ought to be prepared to incur similar costs in order to produce similar benefits in return. For many people, the most immediate problem from the perspective of fairness with OECD farm subsidies and the misuse of anti-dumping duties is their violation of this norm. In reducing trade barriers, the developing world provides the significant benefits of market access to the developed world. It ought to be able to count on similar or substitute benefits from the developed world in return. But the E.U., U.S. and Japan are in effect withholding those benefits, via retention of their own distortionary trade

¹⁴⁵ James himself seems to have this second argument in mind, as indicated when he writes: "If less economically developed countries are indeed supposed to have a chance to benefit from access to the global markets *that already affect them*, trading nations bear responsibility for the roads, communications and other infrastructure needed to make that chance real" (2006, 717, *italics mine*). The italicized phrase could, however, merely indicate that the principle applies only to current participants in the regime.

policies. They are unwilling to accept the short-term economic losses and vulnerability that come with trade liberalization, but more than willing to accept the benefits that accrue to them as a result of the developing world accepting those same losses and vulnerability. A similar violation of reciprocity is apparent in relation to the rules for accession to the WTO. Incumbent members exploit the vagueness in the current rules in order to place stricter and more demanding requirements on Least Developed Countries eager to join than those that they themselves are under.¹⁴⁶ This equates to the developed world demanding sacrifices in its favor that it has no intention of reciprocating.

I suggest that the wrong in such cases can be captured by the following principle:

Fair Return. Trade-related concessions made by one country to another ought to be returned by the latter in the form of trade-related concessions conferring a similar benefit.

We should take care to include among the trade-related concessions covered by this principle the quite general concession involved in the act of sustained adherence to a mutually agreed upon common set of rules. Such adherence will be a concession in cases where failure to adhere in a given instance would result in benefits to the violator.¹⁴⁷ It is worth emphasizing that a requirement of universal adherence to a “common” set of rules should not be taken to preclude measures of “Special and Differential Treatment” for developing countries, especially LDCs. The necessity for such measures is due to the fact that in cases where parties are of radically different advantage or capacity, adherence to a single rule, narrowly interpreted, may impose radically different burdens. Provided that the exemptions in question are understood to apply to any country at an early stage of development (and, thus, to previous time-slices of more developed countries), allowing them is not unfair.¹⁴⁸

¹⁴⁶ Such ‘WTO-plus’ and ‘WTO-minus’ conditions have included the imposition of stricter requirements on binding tariffs, the removal or phasing out of the “other duties and charges” loophole, denial of ‘special and differential treatment’ rights, elimination of export duties or classing of them as binding at a certain level, much more extensive liberalization of service sectors, and pressure to move towards a market economy and privatize the public sector. (UNDP 2006, 131-3).

¹⁴⁷ The basic fairness-related principle of “one rule for all” is flagrantly violated by the current regime. The UNDP notes that “the rules in the Uruguay Round’s Agreement on Agriculture are so skewed that although they prevent middle-income developing countries from using subsidies, they have enabled the EU to continue giving such support and the US to increase it” (2006, 55). Such policies effectively amount to dumping: export prices for white sugar in the EU were only a quarter of production costs in 2002, and, because of the immense scale of production, effectively set world prices at that level (Oxfam 2002, 114). Hence the special irony of the OECD’s spurious charges of the developing world with “dumping” artificially cheap goods.

¹⁴⁸ A need for special and differential treatment of developing countries has long been recognized in the global trading regime, but has been poorly implemented. What fairness plausibly requires in this area is some middle path between a complete exemption from reciprocity (the option adopted in the GATT) and merely minor exemptions (such as delayed implementation, the only special treatment allowed in most WTO agreements).

I think that the principle of *Fair Return* is attractive and important. However it is not well understood as a principle of *structural* fairness. This is because it is concerned both with bilateral rather than multilateral relations, and with the nature of individual agreements (or series of agreements) rather than with the aggregate effects of the international trading regime as a whole. It departs, then, from my main concerns here, and may be a borderline case of a principle of distributive justice (see 5.2 *supra*). Nonetheless, because *Fair Return* arguably captures a number of the concerns that people have about the current state of international trade, it is worth highlighting, and also worth briefly canvassing its relationship to the principles already discussed.

The relationship of *Fair Return* to *Fair Benefit and Burden* is plausibly instrumental. Compliance with the former over the long term can be expected to contribute to the equalization of benefits and burdens across WTO member states. *Fair Return* may also provide an additional argument for *Fair Inclusion*. Developing countries have made concessions in opening up their markets to the developed world, and, according to *Fair Return*, are due concessions conferring a similar benefit. But the benefit in question cannot be fully returned – any superficially reciprocal concessions will be relatively toothless – if developing countries do not have the capacity to make use of it. Hence the *Fair Inclusion* requirement. It is worth noting, however, that the case for *Fair Inclusion* on this line is a limited one. Developing countries will be owed the material basis for market access to be of real benefit only if they have themselves benefited others, and the extent of “real benefit” to which they are owed access will need to correlate with the extent of the benefit that they have conveyed. This point puts some brakes on the redistributive implications of *Fair Inclusion*, if the latter is derived exclusively from *Fair Return*. Some developing countries, particularly those dependent on primary commodities, currently do not have a great deal to offer the world, economically speaking. But if this is so, it may not be troubling on reciprocity grounds if they do not get a great deal back.¹⁴⁹ This suggests that if any major redistributive implications follow from *Fair Inclusion*, they are more likely to be derived via *Fair Benefit and Burden* rather than from *Fair Return*.

The preceding discussion can be summarized as follows. Where the multilateral trading system is concerned, the norm of non-discrimination applies in the form of *Fair Benefit and Burden*, the latter of which arguably implies the distinct principle of *Fair Inclusion*. The norm of reciprocity, on the other hand, applies most naturally in the form of the non-structural principle of *Fair Return*. While the difficulties in working out what precisely these principles require in practice are significant, each suggests that the current regime of international trade is unfair.

¹⁴⁹ This claim might be rejected on the grounds that the fact that LDCs have little to offer the rest of the world is partly caused by the multilateral trading system itself (especially, by subsidized exports from the developed world). But, while this is so, the “partly” is relevant. Adverse price trends and the low value-added nature of primary commodities also have a significant role to play, and cannot be blamed squarely on developed nations.

Is this the sort of unfairness that should trouble utilitarians? The discussion at 5.3 *supra* suggested that fairness within a given context of governance is recommended by utilitarianism in cases where it promotes socially beneficial cooperation and/or contributes to the sorts of egalitarian outcome that are of utilitarian value. There is reason to think that both of these conditions are satisfied in the case of the multilateral trading regime. Consider, first, the cooperation argument. Utilitarians have strong reason to support the multilateral trading regime, as part of a broader agenda of international development. Trade theory demonstrates that free trade between countries is of general economic benefit, by virtue of allowing each country to fully exploit its comparative advantage in production. Gains from trade include the benefits of specialization (economies of scale), access to larger markets, foreign ideas and technology, and cheaper or otherwise inaccessible goods. These economic benefits can be expected to translate into increased national welfare - at least up to a certain level of GDP, and provided that certain domestic distributive constraints are satisfied.¹⁵⁰ Admittedly, the way in which international trade liberalization has been pursued to date has been highly problematic, not only due to the forms of unfairness canvassed above, but also due to a failure to take seriously legitimate concerns about the effects of liberalization on domestic distributive justice, national security, culture and other shared values not directly related to economic growth. But, provided that these concerns are addressed, the continuation of the regime itself is something that utilitarians should support. Moreover, importantly for the present argument, fairness within that regime is plausibly a necessary condition of its longer-term success. Fairness would, first, eliminate some of the distortions that prevent the multilateral trading regime from operating to its full potential. And, second, it would arguably bolster political support for that regime. Many feel that a sense that the WTO process is skewed in favor of the developed world has reduced popular support for trade liberalization in many countries of the developing world (and in some sectors of the developed world also), thereby hampering further progress.¹⁵¹

This cooperation-fostering argument can also be supplemented by a distinct argument relating to the egalitarian implications of fairness in trade. The satisfaction of *Fair Benefit and Burden*, *Fair Inclusion* (and *Fair Return*) would plausibly render the results of the multilateral trading regime considerably more egalitarian than they are at present. And the type of egalitarianism at issue looks both a) desirable (at least in our world of great deprivation, and perhaps beyond

¹⁵⁰ Held (2004) notes that “abolishing all trade barriers could boost global income by \$2.8 trillion and lift 320 million people out of poverty by 2015. In principle, this could cut global poverty by a quarter”. Oxfam claims that “If Africa increased its share of world exports by just one per cent, it would generate \$70bn – a sum that dwarfs the \$14.6bn provided through debt relief and aid combined” (2002, 50).

¹⁵¹ Concerns about fairness in international trade extend from the general public to officials negotiating trade agreements. Albin argues that, although national delegates often claim to be uncomfortable with speaking of fairness in regard to trade liberalization, considerations of (perceived) unfairness in fact played a significant role in deliberations influencing the development and outcomes of the Uruguay round of the GATT (2001, Chapter 4).

it), and, b) feasible. To see the latter, consider some of the measures most likely to be required by the principles that I have advocated. These arguably include, predominantly, the provision to low-income countries of unrestricted quota-free and duty-free access to developed country markets; a ban on direct support to developed country agricultural producers; the elimination of export dumping to developing countries and of anti-dumping actions against low-income countries; the cessation of tariff escalation on products in which developing countries specialize; permission for infant industry protection in the developing world; and a sincere and effective commitment to trade-related technical assistance. Note that execution of these measures requires neither an immense and unwieldy institutional apparatus, nor a single all-powerful global agent, of the kind that renders the possibility of a fully egalitarian global property regime in natural resources unattractive (5.2 *supra*). Instead it can be achieved by means of agents and institutions that already exist and function quite well at the international level: *viz.*, the WTO and its member states. The WTO system has already proven a powerful locus of global cooperation, and its core institution is possessed of some of the more impressive regulatory and adjudicative powers that we see at the supranational level. It is capable of becoming fair in a utilitarian-friendly way.

Or, it is so capable, provided that a further issue that I have not yet highlighted can be resolved. The pursuit of structural fairness at the international level, like that of global decency, can be expected to conflict in some contexts with respect for the collective self-determination of political communities. The suggestion that *Fair Inclusion* may require the developed world to subsidize market access infrastructure in developed countries may have raised this concern; likewise the suggestion that *Fair Benefit and Burden* may require the developed world to finance transitional social protections for developing world citizens displaced by trade liberalization.¹⁵² The WTO system, as it operates today, is already frequently charged with undermining legitimate expressions of political autonomy; the thought here is that attempting to make that system fairer might contribute to, rather than ease, those concerns. One hopes that there are ways of accommodating both fairness and collective self-determination in the global regimes of international trade and property; if not, limits may be placed on the utilitarian desirability of some specific ways of implementing the principles argued for here.

5.6 Global Equality?

This chapter has so far argued that, contrary to initial appearances, utilitarians have reason to call for a fair world along with a decent one. Do they also have reason to call for an equal world - or at least for one more equal than the one we see at present? Some of the sense of scandal that people express regarding the immense gap in standard of living that obtains between people in the developed

¹⁵² A similar concern may also apply to the principle of *Fair Exclusion* that I advocated in 5.5.2, due to the ways, discussed in Chapter 4, in which the promotion of decency runs up against that of collective self-determination.

and the developing world might be adequately explained by reference to a concern for decency or fairness. It might be thought (rightly or wrongly) that the coincidence of extreme affluence and extreme poverty shows the latter to be avoidable, and yet avoided it is not. Or perhaps we interpret inequality as the result of unfairness, of either the institutional or the cosmic variety: either mankind or the universe, we feel, is giving the global poor a very bad deal. At least some of the concern that is expressed about global inequality, however, is not explicitly attached to either of these concerns; some of us seem to think that global inequality is, in itself, an outrage. This last section of the chapter addresses the question of whether or not utilitarianism can accommodate a concern of this latter, independent, sort. Whether or not it can remains an open question, despite the sum-ranking component of utilitarianism, because (as I have emphasized a number of times - 1.3.4; 5.3) utilitarians might have reason to be concerned with equality of resources at the global level even if equality of welfare, *per se*, leaves them cold. This is because equality of resources, broadly construed, is in some contexts plausibly instrumental to welfare maximization.

Equality at the global level can be conceived of in a variety of ways. Which conception of inequality it is that one selects will affect one's assessment of how much inequality there exists at the global level, and of whether or not inequality has been increasing or decreasing over time. There may also be different normative reasons to be concerned about inequality, depending on which conception one selects. Somewhat arbitrarily, I will concentrate here on what the World Bank terms "intercountry inequality" (2005, 57).¹⁵³ I think that what I have to say about it will, in this case, extend equally to the other versions.

My interest here, then, is in whether or not there exists a (decency-and-fairness-independent) utilitarian case for the following principle:

Global resource Egalitarianism (GRE). Global distributive justice requires that, for any political communities *x* and *y*, the average amount of global standard goods that individuals in *x* possess over their life-time be roughly equal to the average amount of global standard goods that individuals in *y* possess over their life-time.¹⁵⁴

¹⁵³ The World Bank distinguishes between *global*, *intercountry* and *international* inequality in incomes (2005, 57), drawing on a distinction made in Milanovic (2005). *Global inequality* takes into account the real (PPP-adjusted) incomes of all of the world's individuals, whereas *international* and *intercountry inequality* focus instead on the mean incomes of countries. *International inequality* includes information about the number of people that each country contains (including all individuals in inequality calculations, as in *global inequality*, but assigning to each person her or his country's mean income), whereas *intercountry inequality* filters out that information, comparing the mean incomes of countries without paying attention to the number of people included within each country.

¹⁵⁴ See chapter 2, section 2.2, for an explanation of the nature of global standard goods, and the rationale for selecting them as the distriband here. The principle given above can be understood as a slightly more precise version of the following principle, considered in Chapter 2:

In order to be sure of narrowing in on the question, imagine that all contexts of governance satisfy principles of fairness, and that all countries have excellent satisficing scores. (Say that half of the world has a standard of living comparable to that of contemporary Ireland, and the other half one comparable to that of contemporary Portugal.¹⁵⁵) Such a world, while a great deal preferable to ours, would remain far from satisfying *GRE*. Should utilitarians be concerned?

Two arguments for taking the affirmative line, familiar from the discussion of egalitarianism in Chapter 1, point to the fact of the diminishing marginal utility of resources, and the possible connection between equality and economic growth. Some of the resources held by the global better-off, it might be suggested, would produce more utility, or conduce to greater global economic productivity, in the hands of the global worse-off. These arguments, however, are much weaker at the global than at the domestic level. I noted at 5.3 *supra* that if we are to employ the fact of diminishing marginal utility or the equality-growth connection to egalitarian effect, we need to be able to show that the act of redistribution will not itself absorb all of the potential gains, through administrative inefficiencies or incentive effects. These concerns appear pressing at the global level, due to problems of scale as well as limits on international solidarity. Additionally, there are serious worries about how policies directed at *GRE* would interfere with collective self-determination. Such concerns might be outweighed if we were strongly convinced of the merits of redistribution. But the diminishing marginal utility argument for equality is in fact controversial in cases where all parties have attained decency, and the evidence on the relationship between inequality and growth remains inconclusive.

Perhaps, it might be suggested, a more secure case for *GRE* can be derived from global versions of the social/political arguments for material egalitarianism that I earlier suggested have force within the state (1.3.4 *supra*). Some of these arguments are not easily extended to the global arena. The danger that inter-country inequality in income and wealth will undermine egalitarian interpersonal relations, social solidarity, self-respect, equal social status or individuals' satisfaction with their social position relative to that of others does

Global resource egalitarianism. The global basic structure ought to be set so as to eliminate large inequalities in possession of global standard goods across all people over the lifespan.

(with the reference to the global basic structure removed for the reasons given in 5.5.1 *supra*). Section 2.2.1 has already cast some doubt this principle, on the twin grounds, roughly, that is both too blunt a utilitarian instrument and not a feasible aim for any existing agent. I find these concerns persuasive, but they might not have been felt to clinch the deal. Perhaps utilitarians should see *GRE* as desirable, however blunt, or as a work in progress: something that we should attempt to create an agent to implement. The present discussion should be taken to supplement and complete the earlier discussion, by highlighting some additional considerations that I consider to nail the coffin.

¹⁵⁵ Portugal had a per capita GDP (PPP) of \$19,800 in 2006 (see CIA 2007), and was ranked 20th in *The Economist's* Quality-of-life Survey that same year; the equivalent figures for Ireland were \$44,500 and 1st.

not appear pressing in the international context. By their very nature, oppressive or dominating interpersonal relationships only rarely extend across borders. And material inequality is much more likely to lead to status differences, feelings of inferiority, and dissatisfaction when the parties involved share a relatively circumscribed social or cultural environment, in which differences in asset endowments are more psychologically salient.¹⁵⁶ While with greater global integration this description may become true of the world as a whole, it is very doubtful that we have reached that point yet (c.f. Scanlon 2004, 14-15).

Some of the other arguments for material egalitarianism on social or political grounds look more applicable to global politics, in particular those based on concerns about the effects of material inequality on autonomy and the fairness of political and economic institutions. Even in a world of universal decency, the citizens of wealthier countries can be expected to have greater ability to push their agendas through shared institutions. This may result both in violations of substantive or procedural justice, and threats to collective self-determination.¹⁵⁷ Note, however, that arguments of this kind do not provide the sort of independent argument for global egalitarianism that we are looking for here. This is because, although couched in the language of non-domination and political autonomy, they essentially reduce to the thesis that inequality produces *unfairness*.

The independent case for *GRE*, then, I suggest, is currently weak. Moreover, I now want to add, even if the state of affairs at which *GRE* aims were attractive on utilitarian grounds, for the above or other reasons, it would remain debatable whether or not it ought to be a utilitarian *goal*, in the sense of an object of active pursuit. Some development economists are of the view that the world's countries are on a route to convergence in per capita income in the long term.¹⁵⁸ If this is correct, global egalitarianism might be but a waiting game, and it might well be better to let that game run its course rather than make active attempts at equalization. Whether or not this is so is currently unclear: the convergence

¹⁵⁶ Research suggests that the effects of inequality on subjective happiness are at their strongest when the parties involved are at socially close quarters. Layard cites studies suggesting, for instance, that one's dissatisfaction with one's own job is inversely related to the amount one's spouse earns, and that a woman whose sister's husband earns more than her own is more likely to seek work (44-5). He claims that these tendencies derive from the fact that one interprets the successes of people within one's close peer group as something that one might have achieved oneself (44). This particular thought is much less likely to arise when making comparisons internationally.

¹⁵⁷ C.f. Satz: "Even though each country requires a certain threshold of resources, it also requires relative equality (along certain dimensions) with other nations if it is to remain democratic and not be dominated by the unaccountable actions of others" (1999, 81); Tan: "[d]ifferences in power relations between nations, which economic inequality engenders and sustains, obstruct the right to self-determination of the least advantaged... allow[ing] some nations to more easily exploit others" (2004, 117).

¹⁵⁸ This is the thesis known as "unconditional convergence". It also comes in a weaker version, "conditional convergence", according to which poor countries initially grow faster than rich countries, controlling for differences in such things as rates of savings. See Ray 1998, 74-90.

hypothesis depends on quite special assumptions, and the tendency to which it refers is not currently borne out by the data (see Ray 1998, 74-90).

The above discussion suggests that at least the following empirical questions need to be answered if we are to decide whether or not aiming for greater global egalitarianism is a sensible utilitarian course. To what extent do resources continue to produce greater marginal utility in the hands of the worse off than in those of the better off when the former enjoy levels of wellbeing at or above the decency threshold? Would international redistribution of resources increase economic growth? What costs for global welfare would efforts to produce greater global egalitarianism cause? Will national economies converge in per capita income (and other global standard goods) on their own steam over the long run? I suggest that the extreme difficulty of answering each of these questions, given the current state of our knowledge, makes it much harder to make the case for an independent principle of resource egalitarianism at the global level than it is at the domestic level. In the context of domestic politics it is both much clearer than it is in global politics that inequality in standard goods poses threats to wellbeing, and much easier to see how it can be addressed – for instance, via progressive taxation and other familiar redistributive actions on the part of the state. I am inclined to think, as a result, that utilitarians should be wary at present of recommending global equality as an independent goal of global distributive justice, and confine themselves instead to the global decency goals and principles of fairness argued for earlier.

5.6.1 Global equality through the back door?

I will close by briefly considering the possibility that, even if global resource egalitarianism is not in itself a desirable goal of global distributive justice (at least given the current state of our knowledge and capacity) the other goals of global distributive justice that I have recommended will get us a considerable way towards it. On the face of it, this may not seem especially likely. If the developed world continues to proceed up the development ladder, and if the developing world proceeds more slowly, movements in the direction of global decency might well coincide with no change, or even an increase, in differences in access to global standard goods across countries. And, given that I have rejected the idea that there is a single, all-encompassing global institutional scheme to which a comprehensive principle of resource egalitarianism might apply on grounds of fairness, there are limits on the scope of global resource equalization that fairness might require. However, a certain available move might serve to amp up the action. It might be claimed that the achievement of structural fairness in global politics, and/or the attainment of global decency (in particular, Goal 1) is conditional, as an empirical matter, on a certain degree of global egalitarianism. Wealthier nations, this argument would go, by virtue of their superior bargaining power in international negotiations, or by virtue of their superior purchasing power in international markets¹⁵⁹, either prevent

¹⁵⁹ I noted in Chapter 4 (4.4.2) that it is possible for a country to reduce the satisficing score of another country quite unintentionally simply by virtue of being economically better off than the

economic growth in developing countries, or permanently entrench unfair global terms of association.

While this thesis might be true, the following are some reasons to not leap too quickly to endorse it. First, the thesis as stated is very strong. There are two ways in which one might take on board some of it, while holding back from full support. One might agree that in *some* cases, inequality in bargaining or purchasing power between two or more countries obstructs improvements in satisficing scores or leads to unfairness, while denying that it does so as a quite general matter. Or, one might agree that inequality in bargaining and purchasing power *temporarily* obstructs the achievement of decency or fairness, while nonetheless denying that it will over the longer term. A second reason for caution, in the case of decency in particular, is that it is unclear how the implied alternative – much greater global egalitarianism – would itself stack up where the promotion of decency is concerned. It is possible that a massively more equal world would pose significant risks for the achievement of the latter goal, largely because of the type of global governance that might be required to secure it. Finally, where the case of fairness is concerned, it can be claimed that while equalizing power may be one way of preventing unfair bargains from being struck, it is not clear that it is the only, or the best, way (*c.f.* p. 124 *supra*). These points together suggest to me that we should not assume, in advance of clear evidence to that effect, that fairness and decency require extensive resource egalitarianism for their achievement.

5.7 Conclusion

The skeptics are correct, then, that utilitarianism, at least for the moment, provides at best a weak case for equality *per se* at the global level. The utilitarian case for fairness, however, wears a different aspect. In spelling out that case, this chapter has taken issue with a range of theorists on a range of questions. On the *ground* of fairness, it has rejected the claim, made by some “cosmopolitans” that the demands of distributive justice derive from (as Nagel puts it) “a duty of fairness that we owe in principle to all our fellow human beings” (2005, 119). On the governance conception of structural fairness such a duty can exist not in principle, but only in the presence of an appropriately global context of governance. But this chapter has also rejected Nagel’s implication that the only alternative is to posit a duty of fairness that applies solely between co-citizens. Such a suggestion rests on an unwarrantedly restricted conception of fairness-appropriate governance. On the *scope* of fairness, relatedly, this chapter has rejected both the claim that duties of fairness connect us all one to one, while also rejecting the claim that such duties do not cross the borders of the nation or polity. On the distributive *content* of fairness, this chapter has rejected a fully global form of resource egalitarianism, while also rejecting the claim that

latter. This is due to the fact that the value of one party’s resource holdings is in some cases partly dependent on the amount of resources that other parties hold. If cross-border negative externalities of this kind are sufficiently severe, they might work against the achievement of Goal 1.

fairness has no distributive consequences whatsoever internationally. Instead, I have advocated an intermediate position on each of these questions, one that I think reflects our considered moral intuitions in response to the distinctive circumstances of contemporary global politics.

The conception of global distributive fairness argued for in this chapter is also, I hope to have shown, entirely compatible with utilitarianism (if certainly not uniquely sanctioned by it). Distributive fairness matters for human wellbeing. To the extent that principles of the kind that I have endorsed above provide people with a stake in the continuation of what are on balance generally beneficial structures of socioeconomic cooperation, have a broadly egalitarian upshot, *and* reinforce requirements of decency, as I have argued they do, they are principles that utilitarians can and should support. Utilitarian theorists of global distributive justice who suggest otherwise are selling their theory short.

Chapter 6. The Combined Approach

6.1 Introduction

This chapter draws together the results of Chapters 4 and 5, in order to address the question of how the distinct goals and principles argued for in the dissertation are to be jointly pursued. I begin by discussing that question at a general level, and then present an illustrative application of the combined account to the specific case of immigration policy. By the end of the chapter I hope to have shown that the approach to global distributive justice that I have developed in the preceding chapters is not only appealing at the theoretical level, but also provides a sensible and useful way of framing and addressing some pressing substantive issues in contemporary global politics.

6.2 Pluralism and the priority problem

In this dissertation I have advocated a pluralist account of utilitarian global distributive justice: one which construes global decency and fairness as two distinct and important aspects of the utilitarian moral project. The pluralistic nature of this account raises the possibility that the distinct goals and principles that it posits will in practice come into conflict with each other. Although all moral reasons for action can, on a utilitarian view, ultimately be traced back to a single reason, at the secondary level – the level at which principles of distributive justice operate – they are likely to compete for our attention and resources. How should any conflicts between the demands of decency and fairness in global politics be settled?

In discussing this question, it will be useful to have in mind a specific case, or set of cases, in which conflicts of the kind at issue might arise. The case of international trade will serve this purpose well. International trade, as previous chapters have shown, is an area in which decency and fairness are both strongly engaged. This is because cross-border trade not only has the potential to significantly affect the satisficing scores of political communities (for better or for worse), but also takes place within a fairness-apt context of association: involving regular, intentional, normatively-guided, alterable and distributively consequential collective behavior.

6.2.1 Case study: International Trade

The first thing to note is that, in regard to many aspects of the multilateral trading regime, considerations of decency and fairness point in much the same direction. As a specific example, take the recent developments concerning trade in ideas and services encapsulated in the WTO's TRIPS and GATS agreements. TRIPS (Trade-related Aspects of Intellectual Property) introduces a single global blueprint for the protection of intellectual property rights, involving the extension across all WTO member countries of minimal regulations concerning

patents, copyrights, geographical indicators, and industrial designs. GATS (The General Agreement on Trade in Services) promotes the extensive liberalization of trade in a wide range of services, including insurance, banking, tourism, and electricity and water provision. This involves the removal of restrictions on foreign investment, the nature of service suppliers and the quality of service output.

TRIPS and GATS are commonly criticized on grounds of both decency and fairness. Take first decency. Many have claimed that TRIPS poses important threats to economic development, public health and food security in developing countries. Although in developed countries patent protection provides an important impetus to technological innovation, it can have quite the opposite effect in countries at an earlier stage of development, given that it restricts the capacity of the latter to imitate technologies created by the former. In the health sector, TRIPS delays the entry of generic medicines into the market, keeping prices high and out of the reach of the global poor. In the agricultural sector it threatens the rights of poor farmers to save, exchange and sell seeds, thereby rendering access to vital foodstuffs insecure (Oxfam 2002, 213-220). GATS, it is argued, poses similarly serious threats in the area of public service provision. The annexing of utilities (and perhaps, in the future, health care and education) by foreign companies threatens to compound the problems - such as unaccountability, fragmentation of services, and limited provision in marginal areas - that domestic privatization can cause, with serious welfare implications for the poor (Oxfam 2002, 227-9). Water, electricity, health and plant genetic material are vital public goods, essential to the basic wellbeing of all citizens. Decency requires that they be protected, and, if the empirical claims made above are correct, that TRIPS and GATS therefore be reformed.¹⁶⁰

But other common criticisms of TRIPS and GATS go beyond these decency-related concerns, to question, on equity grounds, the way in which each agreement distributes benefits and burdens across countries. These additional concerns, I suggest, are well captured by the principles of fairness that I advocated in Chapter 5. I argued there that, if it is to be fair, the multilateral trading regime must satisfy the following three principles:

Fair Benefit and Burden. The benefits and burdens created by the multilateral trading system ought to be distributed equally amongst participants, unless special justification can be given for unequal treatment.

Fair Inclusion. People affected by trade are to be provided with the material basis for market access to be of real benefit.

¹⁶⁰ This claim is expressed cautiously, because there exists controversy over the merits of both agreements, in terms of development and the interests of the poor. The World Bank reports that the distributional effects of infrastructure privatization in Latin America have been a "mixed bag" (2005, 171), sometimes resulting in improved access for the poor. And some argue that the incentive effects of international patent protection will benefit developing countries in the long run (though see fn 162 *infra*).

Fair Return. Trade-related concessions made by one country to another ought to be returned by the latter in the form of trade-related concessions conferring a similar benefit.

Insofar as TRIPS and GATS pose barriers to development of the kind just discussed, they threaten to work against the satisfaction of *Fair Inclusion*. They also undermine the satisfaction of *Fair Benefit and Burden*, given that both agreements are significantly more beneficial to citizens of the developed world than they are to those of the developing world. The huge majority of the intellectual property rendered eligible for international patent protection under TRIPS derives from industrialized countries. This means that the agreement will result in a significant transfer of resources from the developing to the developed world.¹⁶¹ Similarly, it is foreign service providers from the developed world who will derive by far the greatest advantage from GATS, and the poor of the developing world who will absorb by far the greatest risks. There seems no moral justification available for this extremely differential impact, given that alternative policies are available that would preserve some of the mutually beneficial aspects of these agreements, while tempering their more harmful aspects.¹⁶² Finally, both TRIPS and GATS arguably represent a failure of the norm of reciprocity encapsulated in *Fair Return*. Universal adherence to a single set of regulations concerning trade in services and ideas may appear to satisfy the reciprocity-related principle of “one rule for all”. But in fact the concessions made by developing countries in complying with the regulations in question are much more burdensome than those made by developed countries, by virtue of their distinct position on the development trajectory.¹⁶³ Once this inequality of impact is recognized, allowing exemptions for developing countries does not look like a failure of reciprocal adherence to a universal rule, but rather the application of a single, more sophisticated, rule to parties who differ in relevant respects. A further, more overt, violation of *Fair Return* is apparent in the fact that developing countries were pressured into signing TRIPS and GATS in exchange for promised increases in market access that have largely failed to materialize.

Where TRIPS and GATS are concerned, then, as with many other aspects of the multilateral trading regime, decency and fairness are both engaged, and may well converge, broadly, on both common criticisms and common policy

¹⁶¹ Chaudhuri, Goldberg and Jia (2004) suggest that foreign producers would gain something like \$53 million per year if India satisfied international patent protection standards – while the Indian economy would lose \$450 million, \$400 million of which would have gone to consumers.

¹⁶² Where pharmaceutical patents are concerned, the World Bank claims that, in cases where “rich country markets already support the cost of research, poor countries could be allowed to produce or import cheaper generic substitutes, at no significant cost to either rich countries or the firms that carry out research”, resulting in “more equitable provision without undermining efficiency” (2005, 214). In support of this suggestion, the Bank cites research that estimates that extending patent protection to developing countries to 20 yrs would be equivalent, for firm profits, to extending patents in developed countries by two weeks (Lanjouw and Jack 2004).

¹⁶³ The World Bank reports that “[c]ountries adopting patent protection today are doing so at levels of GDP between \$500 and \$8,000 per capita, while OECD countries did so when their GDP per capita was around \$20,000 in 1995 prices” (2005, 214).

recommendations.¹⁶⁴ The obvious reason for such convergence is that the worst off participants in the multilateral trading system are very badly off in absolute terms. Insofar as they are likely to either worsen the situation of the worst off, or to obstruct potential improvements in that situation, unequal burdens from trade, insufficient inclusion and unreciprocated concessions, besides being unfair, are also very likely to reduce or stagnate satisficing scores globally. This means that, in our world, an equitable system of international trade is very plausibly a necessary condition of the achievement of global decency over the long term.

This last claim is so plausible that it is apt to obscure the fact that the potential nonetheless exists for conflicts, in the shorter term, between the goals of decency and fair treatment in regard to international trade. In order to understand how such conflicts might arise, note the following two features of the global decency goals for which I have argued. First, they are capable (we can assume) of being achieved by means of *targeted* action. We can in principle work towards global decency by focusing our attention on any subset of the world's population that we choose, as long as we get to them all in the end. Second, the global decency goals contain no in-built, principled tendency towards equality. Fairness differs in both of these respects. First, the treatment that fairness calls for is *universal* in nature: it must be metered out to all participants in the relevant context of governance, not only to some of them. Targeted fairness is not fairness at all. Second, although fairness does not always require substantively egalitarian outcomes, it does in many contexts provide a reliable push in the direction of equality.

These contrasting features result in the potential for two distinct kinds of conflict between global decency and fairness. The first derives from the fact that decency might sometimes best be promoted by means of "targeted" actions that are incompatible with fairness, by virtue of the latter's commitment to universal forms of treatment. As an example, take the following case mentioned by James, again relating to international trade:

[S]uppose that, because India and China combined contain much of the world's population, and much of the world's poor, the WTO could maximize poverty reduction globally by allowing trade only with these countries. Perhaps each country is to erect high trade barriers against the rest of the developing and less developed world. We would not call this fairness in trade...the poor of Latin America and Sub-Saharan Africa are supposed to have a chance to benefit from access to global markets, even if that chance costs the poor elsewhere. (2006, 716)

¹⁶⁴ If the empirical claims referred to above are correct (and that is open to debate), the following measures would arguably be recommended. Where TRIPS is concerned, permissions for more flexible, short-term and narrowly-scoped patent protections in developing countries, and a strengthening of the overly weak public health and food security safeguards included in article 8; where GATS is concerned, minimally, an exclusion of public services from liberalization requirements.

This conclusion can be interpreted as a minimal implication of *Fair Inclusion* - it being a necessary condition of people affected by trade having genuinely beneficial market access that those people have market access to begin with. Another case in which a conflict between *Fair Inclusion* and decency might arise, this time more directly, is the following. Say we have limited resources to devote to trade-related technical assistance. We could either give all LDCs a little infrastructural support (enough to make a genuine difference, although only a small one), or we could give one country a great deal, thereby (we can optimistically assume) propelling it into a course of sustained pro-poor development. Again, this would seem to be a defeat for fairness at the same time as being a victory for decency.

The second kind of potential conflict between decency and fairness derives from the fact that the state of affairs at which decency aims might sometimes best be promoted by means of unequal distributions of benefits and burdens that fairness, by virtue of its egalitarian tendency, rules out in that particular instance. Say that we could modify the multilateral trading regime so that some or all developing countries were given privileges far in excess of the “special and differential treatment” to which they are entitled on grounds of fairness, including no requirement to reciprocate trade concessions made by developed countries, even in cases where such concessions would not be especially burdensome. Such inegalitarianism, while violating *Fair Benefit and Burden* and *Fair Return*, might, under certain conditions, be maximally conducive to global decency. A failure to institute a reform of this kind under those conditions would represent a commitment, at least in the short term, to fairness over decency.

6.2.2 Options

How should such conflicts be resolved? Should any fairness concerns raised by the multilateral trading regime, or other international contexts of governance, be traded off against potential improvements in the satisficing scores of developing countries? If so, to what extent? And how?

Strict lexical priority

One simple way to resolve conflicts between competing goals or principles is to opt for a system of strict lexical priority, according to which, in any situation in which the requirements of one goal or principle conflict with those of another, one of the two is allowed systematically to prevail. This is not an attractive option in the case at hand, in either of its variants. Consider, first, the “fairness before decency” option. Many moral theorists are of the view that duties of fairness do, as a quite general matter, take priority over duties to promote wellbeing. But a claim of this sort is in fact very difficult to sustain. For it is not only easy to think of duties of decency that are exceedingly urgent (for instance, that of providing the starving with food), but it is likewise easy to think of duties of fairness that do not seem very urgent at all (such as sharing the fondue fairly with one’s spouse). I suggest that very few people, besides those hardy souls

who deny that we are under *any* moral obligation to assist needy others in cases where they are nearby and we can do so at little cost, would claim that if I am faced with the options of giving the second half of the fondue to a nearby person who would otherwise starve, or saving it for my spouse, my duty to do the latter is more urgent than my duty to do the former. Cases such as these suggest that, as far as urgency is concerned, decency taken quite generally is, at the very least, morally on a par with fairness.¹⁶⁵ If this is so, utilitarians should agree with Risse that, in at least some cases, “[t]ransitory unfairness might be the price to pay for developing countries to beat poverty and eventually to reach a stage where such concerns can be taken more seriously...disregarding fairness concerns (perhaps temporarily) is warranted if sufficiently good and likely consequences outweigh them” (2006).

Perhaps, it might be suggested, we should go further than this, and endorse the alternative lexical ordering, according to which duties of decency systematically prevail over duties of fairness. This move might be expected to be especially attractive to a utilitarian, given the strength, underscored at the beginning of Chapter 4, of the utilitarian argument for decency. The “decency before fairness” option, however, looks similarly unsatisfactory, for the following reason. The global decency goals argued for in Chapter 4 are likely to take quite some time to secure. If we were to claim that decency always took priority over fairness, this fact would mean that, for some significant period of time into the future, reasons of fairness would be constantly at risk of being trumped by reasons of decency. But this possibility is worrying. Practices of fairness, to an extent greater than practices of decency, are dependent for their long-term viability on sustained compliance. They are not the sorts of things that can be repeatedly violated and nonetheless sustain themselves over the long term. But the maintenance of practices of fairness over the long term is, as I earlier argued, something that utilitarians, as much as anyone else, should want. The utilitarian value of fair relations is too important for a quite general presumption in favor of decency to be justified.

Intuitionistic balancing

The implication of the above is that no quite general lexical priority rule will serve our purposes here. One route to take in response is to deny that there is any general answer to the question to be had. Perhaps utilitarians ought to advocate an account of global distributive justice that resembles the “intuitionistic” “mixed conceptions” of domestic distributive justice that Rawls describes in *A Theory of Justice* (1971, 107). Such conceptions “direct us to

¹⁶⁵ Why, despite the plausibility of this claim, are duties of fairness (often equated with justice) frequently claimed to be especially urgent, compared to duties of other kinds? Campbell suggests that “the idea that justice must be overriding attaches to the rather vague use of ‘justice’, in which it is equivalent to ‘rightness’” (1974, 1, 4). Campbell claims that when we remind ourselves that justice is not best seen as “a synonym for rightness, even rightness in distribution, but as having to do with a specialized range of right-making characteristics, then it is perfectly in order to regard humanity as, in certain cases, overriding justice. Sometimes it is more important to relieve distress than to be fair” (1974, 14).

follow a plurality of ends” (279), but provide no priority rule for determining the balancing of those ends against each other (1971, 32). On such an approach, conflicts or trade-offs between the goals or principles selected are to be decided on a case-by-case basis in accordance with what seems on reflection to be appropriate.

Rawls appears to have three distinct concerns regarding intuitionistic mixed conceptions of justice. The first is that such conceptions, in lacking “constructive and recognizably ethical criteria” (1971, 36) for solving “the priority problem”, lack something that is necessary if a conception of justice is to provide a *theory* of justice, rather than merely a kind of optimistic stab in the moral dark. How to weigh the importance of various social goals against each other, or how to settle conflicts that arise in their pursuit, is a large part of what a conception of justice is for.¹⁶⁶ The second concern is that intuitionistic mixed conceptions, in lacking the relevant priority rules, fail to provide sufficient guidance for policy-making. They only give unequivocal advice when all of their distinct goals or principles point in the same direction, but such happy coincidences may be rare. The third concern, suggested in other parts of *Theory*, and in Rawls’ later work, is that resort to intuitionistic balancing undermines satisfaction of the “publicity condition” on an acceptable conception of social justice. This condition is satisfied when “everyone accepts, and knows that everyone else accepts, the very same principles of justice” and the basic structure “is publicly known, or with good reason believed, to satisfy these principles” (1993, 35).¹⁶⁷ Appeals to intuition in the weighing of priorities can be expected to violate this condition, given that their necessarily private nature disqualifies them as a fully public criterion for decision-making.

I submit that the first of these concerns is at least *less* worrying in the case of an indirect utilitarian account of justice of the kind offered here than in the case of the specific mixed conceptions that Rawls has in mind. This is because the indeterminacy that concerns Rawls in the first criticism would not go all the way down on an indirect utilitarian view. The utilitarian, unlike the intuitionist with whom Rawls is concerned, does at least have a (highly) general answer to the question of which principle or goal ought to prevail over the others in any specific situation. That policy should be chosen which, of the available

¹⁶⁶ See Rawls 1971, 279:

It must be recognized that a fairly detailed weighing of aims is implicit in a reasonably complete conception of justice. In everyday life we often content ourselves with enumerating common sense precepts and objectives of policy, adding that on particular questions we have to balance them in the light of the general facts of the situation. While this is sound practical advice, it does not express an articulated conception of justice.

¹⁶⁷ At 1993, 68, Rawls emphasizes the importance of the publicity condition for ensuring that citizens are not mistaken or deceived about the workings of the basic structure, and the way in which it shapes their self-conception and personal aims. He claims that this is necessary if citizens are to be “fully autonomous, politically speaking”. Satisfaction of the publicity condition is also arguably necessary as insurance against the abuse of public power.

alternatives, maximizes aggregate wellbeing over the long run. Moreover, we can derive from that general answer an explanation for why a more specific answer to the priority problem is very difficult to give. Whether it is the decency-promoting or the fairness-respecting policy that maximizes utility in a given case of conflict will depend on contingent facts about how the world is at the time at which the decision is made. Any attempt to settle the issue in a determinate way in advance of looking at those facts is therefore almost bound to result in implausible implications in regard to some cases.

If this response at least partly lessens the force of Rawls' first concern about intuitionistic balancing, however, it leaves the second and third concerns quite intact. For, although the indirect utilitarian has something general to say about the specific answer that is called for in a specific situation, until she has said something about how the distinct elements of her view are to be balanced against each other in cases of conflict, she is not guaranteed to have that specific answer itself. Still less is she guaranteed to have an answer that the public will be sure to recognize as legitimate. Certainly, the utilitarian who resorts to intuitionistic balancing is not completely at sea in the face of such conflicts. It is pretty clear, for instance, that which of decency or fairness should take priority in a given instance of conflict will depend in part on the size of the hit that each would take if the other prevailed. But in the end, the line will have to be, we simply have to resort to debate and judgment concerning how best to weigh the conflicting considerations against each other.

How worrying ought this to be? The answer, I suggest, is "not very". It would certainly be excellent if our theory of justice were to provide us with a set of rules that allowed us to be sure of always making the right decision when conflicts between decency and fairness arose. But if no such set of rules is available, it will be the theory that claims to provide it that is the proper object of criticism, rather than the theory that makes no such pretension. Given, then, that their underlying theory casts strong doubt on the possibility of the set of rules in question, I suggest that utilitarians should be wary of offering a determinate, specific answer to the priority problem in this case. It is worth emphasizing that a utilitarian theory of global distributive justice retains considerable practical usefulness, even in the absence of such an answer. Perhaps the most important role that it can play is to "single out the criteria which are significant, the apparent axes, so to speak, of our considered judgments of social justice" (Rawls 1971, 34), thereby making clear what exactly is at stake in a given context of political decision, and why we should care about it. This is no small thing, and leaves a utilitarian ample room for normative analysis and guidance in many situations.

Perhaps the best way to show this, and thereby to defend the pluralist account of global distributive justice advocated here against the charge of indeterminacy, is to present that account in action. The remainder of this chapter takes on that task, in the form of an application of the combined approach to the issue of immigration. The ethics of immigration is not only a topic of great practical

urgency, but also one that is thought by some to pose pressing challenges to traditional approaches to distributive justice. If I can show that the utilitarian account advocated here provides a sensible and useful way of understanding and addressing the various moral questions raised by immigration policy, that will be a significant point in favor of my approach more generally.

6.3 Application: Decency, Fairness and Immigration

I will here be using the term “immigration” broadly, to cover each of the various ways in which foreigners can be admitted on a non-tourist basis into a country: as guest workers on temporary visas, as permanent residents, or as new citizens. My focus is not on the question of how precisely the policies of a single state are to be set on these matters, but rather on the question of what moral constraints states in general face when setting controls on immigration into their territories. This question can be restated in one of two ways, depending on where one takes the burden of justification to lie. One can ask which conditions render it morally legitimate for a state to restrict the entry of immigrants. Or one can ask which conditions render demands on the part of individuals to enter a state morally compelling. These questions are not only moral questions, but also, more specifically, questions of distributive justice, of both the domestic and global kinds. The immigration policies of the world’s states have massive distributive consequences, both within those individual states, and globally. As a result, immigration controls call into play not only matters of both decency and fairness, but also many of the other issues discussed in earlier chapters of this dissertation, including the moral justification for the state system, the value of collective self-determination, and the proper balance between the duties of states to promote national and global welfare.

The aims of the discussion are limited in two ways. First, I make no attempt to provide a complete treatment of the issues involved. Any discussion of the ethics of immigration needs to take account not only of the differing political and economic circumstances that obtain in different countries, but also of the fact that potential immigrants fall into distinct categories, each of which gives rise to distinct moral reasons for admission or exclusion.¹⁶⁸ In what follows I will largely be eliding these differences; a fuller treatment would need to pay explicit attention to them. Second, although I will rely on empirical claims at some points, the value of the discussion should not be taken to rest too heavily on the truth of those claims. This is because my goal here is to not to establish the relevant facts, but to demonstrate how those facts, whatever they turn out to be, ought to feed into normative theorizing about immigration policy. Hopefully such a demonstration is capable of surviving a revelation that the empirical situation is different than I assume.

¹⁶⁸ For instance, some potential immigrants are fleeing political persecution, war, natural disaster or famine, others attempting to improve their economic prospects or take advantage of non-economic opportunities unavailable in their own country, others joining relations already overseas.

In what follows I will be working on the assumption that at least some restrictions on immigration are morally justified. I will begin with a brief defense of this assumption, against two influential arguments to the contrary. The first of these arguments, advocated by Joseph Carens (1992, *inter alia*), presents (nearly) open borders as a basic implication of liberal egalitarianism. Carens' argument goes, in summary, as follows:

1. Liberal egalitarians are committed to the moral equality of all persons.
2. Treating all persons as moral equals requires not using morally arbitrary facts about those persons (such as their race, gender, or sexual orientation) to justify inequalities in their treatment.
3. All facts about a person over which that person had no choice are morally arbitrary.
4. The two grounds used for allocating citizenship in the modern world - the country in which one is born, or the nationality of one's parents -- are unchosen.
5. Immigration restrictions involve the granting of unequal rights on the basis of citizenship.
6. Immigration restrictions are inconsistent with a commitment to moral equality.
7. Immigration restrictions are inconsistent with liberal egalitarianism.

Carens interprets this argument as showing that global freedom of movement is a basic human right.

Carens' position is open to three lines of criticism. First, the conclusion that global freedom of movement is a basic human right is, on its face, implausible. Human rights are generally understood both to be universal and to imply duties the violation of which is a severe moral wrong. But a putative right to immigrate lacks both of these features. While some people may have very compelling claims to move to other countries, others do not. A refusal to allow an affluent American to move to the U.K., for instance, does not look obviously impermissible. Nor is such a refusal plausibly in the same category as an act of torture or arbitrary imprisonment, as far as moral gravity is concerned. Second, the claim that free movement is a human right is difficult to reconcile with the exceptions to that freedom that Carens himself recognizes. Carens allows that if waves of immigration, by virtue of sheer numbers, pose a genuine threat to public order or to a nation's distinctive cultural identity or way of life, this will be grounds for legitimate exclusion (1992, 28). Duties to respect human rights, however, are generally thought to be the sorts of things to which exceptions are only very rarely, if ever, permitted. Third, and most importantly, Carens' argument for his conclusion is flawed. The problem lies with premise 3, as given above. The mere fact that a person has not chosen one of her attributes does not render that attribute morally arbitrary, and hence does not render that attribute

an impermissible justification for unequal treatment. Although I did not choose to be very poor at basketball, for instance, denying me admission to the NBA on that basis is not morally wrong. Note that if we reject premise 3, as we should, space is opened up for the claim that citizenship is a morally legitimate basis for differentiating between the rights of distinct individuals. From a utilitarian perspective, the extent to which this is so will properly depend, not, *contra* Carens, on a matter of basic principle, but instead on facts about the consequences for global welfare of different systems of immigration regulation.

The second main argument given for open borders takes a route of this latter kind. Economists from Adam Smith to Milton Friedman have argued that, by creating massive differences in returns to labor in distinct parts of the world, constraints on the movement of people across national borders obstruct the free and efficient operation of the market, thereby decreasing global welfare. While this argument for open borders is more likely to appeal to a utilitarian than the preceding one, it is nonetheless vulnerable to two pressing objections. First, it does not take sufficient account of some of the more negative economic effects that are likely to arise from allowing unrestricted immigration. An open borders policy would probably be economically catastrophic for developed countries, due to the sudden and massive influx of people from the developing world that it would doubtless produce. Given that the developed world generates by far the lion's share of the world's economic goods, this result would very likely cancel out any beneficial effects of global labor market deregulation. Similar economic concerns are raised by Barry's suggestion that open borders would result in the extinction of liberal democracy worldwide, and a massive reduction in the world's capacity to deal with pressing environmental challenges (1992, 282).¹⁶⁹ But, second, even if it could be shown, against these points, that an open borders policy would result in a more productive global economy, this would be insufficient to close the deal in favor of it. What needs to be shown for that purpose is that the more productive global economy that is envisaged would coincide with greater global wellbeing. This latter claim is far from obvious. Among the more important non-economic benefits that are provided by a system of relatively self-contained states of the kind we see today are political stability, social solidarity, substantively democratic politics, and the maintenance of a relatively stable and flourishing culture (see section 2.3.1 *supra*). Unrestricted immigration would plausibly drastically undermine these goods for those in the developed world who currently enjoy them. And, in so doing, it would be highly likely to undermine the possibility of those goods also being extended, eventually, to the remainder of the world's population.

I think that the foregoing discussion provides a strong justification for the placing of at least some restrictions on immigration. The question we should be interested in, then, is that of how far those restrictions ought to extend. The

¹⁶⁹ "Faltering as the response of the industrial countries to 'green' issues has been, they are the only ones with the money and technology to act effectively, and will have to bankroll the rest of the world to do what has to be done. In the dystopia of open borders, there would be no countries with the capacity to act" (Barry 1992, 282).

conception of distributive justice that I have been advocating in this dissertation suggests that we should approach this question in the following way. Faced with a range of relatively more liberal and relatively less liberal immigration controls, we should first consider which spot on the relevant spectrum would be most conducive to a) the achievement of global decency, and b) the satisfaction of any relevant principles of global or international fairness. Second, we should consider whether or not the position that is recommended by the foregoing considerations is appropriately responsive to c) the rights of states to promote domestic welfare, within the limits imposed by their negative and positive duties of global distributive justice. Third, if conflicts between these various considerations are evident, we should consider what balance between them seems most likely to promote maximal global wellbeing over the long run. The following discussion will be structured along these lines.

6.3.1 Decency and immigration

I argued in Chapter 4 that our secondary duty to ensure that as many individuals as possible attain at least a minimally decent level of wellbeing is best expressed, at the global level, in the form of these two goals:

Goal 1. Indirect Global Maxifizing. A world in which all political communities ensure, sustainably, and in a way not dependent on external aid, that the large majority of their population satisfices

Goal 2. Global Humanitarian Assistance. Fulfillment on the part of outsiders of the basic needs of those whose own political community proves unable or unwilling to assist them (as in the case of natural emergencies, civil war, or severe and systematic poverty).

An increase in immigration from its current levels can be expected to further both of these goals. As far as Goal 2 is concerned, a relaxation of restrictions on either permanent or temporary migration would allow those fleeing from humanitarian disasters to move more easily than at present to places of refuge. And Goal 1 is highly likely to be promoted by increases in temporary labor migration to industrialized countries, which can be expected to have a number of very positive effects on third world development.

The most direct of these benefits derive from remittances (income sent home by migrant workers), which already constitute a major source of foreign exchange for many developing countries.¹⁷⁰ Remittances are not only lucrative, but also offer a reliable source of revenue, given that the service sector, from which they chiefly derive, is more stable than other sectors in the industrialized world. Income provided by overseas earnings is used by individual workers both to improve their family's standard of living and opportunities for investment, and to fund community projects. If taxed by the government, remittances can also

¹⁷⁰ The UNDP reports that in Vietnam remittance inflows account for around 10% of export revenues and are roughly equivalent to the annual flows of overseas development assistance or FDI. (UNDP 2006, 100).

be used to finance public development initiatives. Besides these direct benefits in the form of increased revenue, temporary labor migration also results in more indirect social and economic boons for sending countries. Migrant labor produces experience, skills and contacts that can contribute to economic growth in the sending country, and strengthens the social and economic freedom of women (who make up the majority of migrants from many countries), with positive knock-on effects for general development.

There are two main reasons to support a global development strategy focused primarily on temporary migration over permanent immigration. First, the positive development effects mentioned above are significantly more beneficial in the case of short rather than long term migration. Long-term migrants are less likely to send earnings home, and the permanent departure of skilled professionals can produce detrimental labor shortages in sending countries.¹⁷¹ Second, increases in permanent immigration are politically very difficult to effect. While increases in temporary labor migration are by no means uncontroversial either, they are a good deal less so.

It is sometimes suggested that reliance on migration as a development tool is fundamentally misguided. Would it not be simpler to move the goods to where the people are, rather than *vice versa*? Tushnet writes, along these lines, that “to the extent that migration occurs because of the maldistribution of the world’s resources, the proper response lies...in revising the distribution of wealth” (1995, 151). If this claim is interpreted as suggesting that liberalized labor movement is only one of a number of strategies that ought to be employed for promoting global decency, the point is well taken. If it is interpreted as suggesting that liberalized labor movement is not an important one of those strategies, it is mistaken. Increased migration has the edge over other methods of global redistribution in several respects. Labor migration, within appropriate limits, is likely to be more economically efficient than foreign aid. It is also bypasses the problems of corrupt and ineffective political institutions in developing countries that bedevil some foreign aid efforts.¹⁷² Unlike many other major development strategies, we have strong evidence that it works. And targeted and well-regulated programs of temporary labor migration are likely to have a better hope of success in at least some industrialized countries than campaigns to increase overseas aid from its stably meager levels.

If the empirical claims made above are correct, the preceding points would constitute a strong case on decency grounds for the liberalization of temporary international labor movement. How much liberalization would be desirable? As

¹⁷¹ The UNDP claims that, in the case of the Philippines, the departure of professional and technical workers (who make up one third of its migrant workers) has led to significant labor shortages in the health sector. Between 1995 and 2000, the number of registered nurses fell from 27,272 to 5,874 (2006, 103).

¹⁷² Pritchett claims that “if rich countries were to permit a mere 3 percent increase in the size of their labor force by easing restrictions on labor mobility, the benefits to citizens of poor countries would be \$305 billion a year--almost twice the combined annual benefits of full trade liberalization, foreign aid and debt relief” (2006, 1)

the earlier discussion of open borders suggested, there are limits on how many people are able to migrate to the developed world without undermining the absorption and wealth-generating capacities of the latter. Clearly, if global decency is our goal, increases in temporary labor migration should not proceed beyond the point at which admission of foreigners would reduce the prospect of achieving that goal over the long term. But it is almost certain that that limit point is currently very distant.¹⁷³ On grounds of decency, then, the developed world is plausibly required to admit many more workers from the developing world than it does at present.

6.3.2. Fairness and immigration

An argument for fairly extensive international labor migration can, then, be derived from the goal of global decency. But global distributive justice, I argued in Chapter 5, is about more than decency. A full account of the ethics of immigration policy also needs to consider how principles of global or international fairness might apply to it.

Eric Cavallero presents an argument for the relevance of fairness to immigration in his 2006. The argument is based on a principle that Cavallero terms “the cosmopolitan premise”, according to which “ongoing institutions of international law should not systematically disadvantage anyone on the basis of involuntary national citizenship or national origin” (2006, 98). Cavallero suggests that this principle is violated in our world, as indicated by the failure of that world to exhibit “immigration-pressure equilibrium”: the state in which the ratio of people wanting to enter and to leave is identical for all countries.¹⁷⁴ He argues that fairness implies that, until we reach the equilibrium in question, countries under positive immigration pressure – countries that, on balance, more people want to enter than leave – have a duty to assist countries under negative immigration pressure – those that, on balance, more people want to leave than enter. This duty can be discharged either by increasing immigration from countries under negative immigration pressure, or by providing aid that will make those countries a more appealing place to stay. To put this proposal in the terms I have been employing, international law (or, more specifically, that part of it which confers on states the right to restrict immigration, which I will refer to as “IIL”, for “international immigration law”), is the intended context of

¹⁷³ The World Bank reports research by Walmsley and Winters (2002) that suggests that an increase of temporary migration into industrial countries by 3 percent of host countries’ current skilled and unskilled workforce would not even begin to compromise the latter countries’ ability to promote decency. Such an increase – “equivalent to permitting an extra 8 million skilled and 8.4 million unskilled workers to be employed at any time, roughly a doubling of current net migration into high income countries” – would, it is claimed, result in “an estimated increase in world welfare of more than 150 billion a year...shared fairly equally between developing- and developed-country citizens” (World Bank 2005, 209).

¹⁷⁴ Cavallero has in mind not actual but hypothetical desires to immigrate: specifically, those desires that would exist if the process of applying for a visa were realistically possible, and the necessary material means for relocation were realistically available, for all who might be interested in applying.

governance; non-discrimination the relevant norm of fairness; and “life prospects” or “opportunities” the metric of fairness.

One way of rejecting Cavallero’s argument is to claim that the norm of non-discrimination is applicable solely to domestic legal systems or, less radically, that, whether or not it applies to contexts other than the state, it at least does not apply to international law. Nagel (2005) rejects the claim that immigration policy is a proper target for claims of fairness on the first of these grounds¹⁷⁵, Rawls (1999) on the second. In Chapter 5 I disagreed. According to the governance conception of structural fairness that I endorsed there, IIL is a plausible subject for norms of fairness. It involves regular, intentional and normatively guided collective behavior, is chosen in the presence of feasible alternatives (e.g. open borders), and has a consequential impact on the life prospects of those whom it affects. It is therefore a context of governance within which a norm of non-discrimination might well be appropriate.

In my view, the main problem with Cavallero’s argument is not the norm of fairness that he selects, but rather his choice of metric: his understanding of what it is that we are to use to compare relative advantage under IIL (see 1.3 *supra*). Cavallero claims that political communities are systematically disadvantaged by IIL compared to other communities if their members have “generally lower life prospects that are in some part explained” (98) by IIL. I am with him thus far.¹⁷⁶ Under the governance conception adopted in Chapter 5, structural fairness is concerned only with created advantages and disadvantages: those produced by the context of governance at issue. Cavallero then goes on, however, to claim that the solution to the systematic disadvantage that he identifies by reference to this criterion in the contemporary world is to “*equalize opportunities for success across international borders*” (100, *italics mine*). This is mistaken. If differences in life prospects are only *partly* explained by IIL (a possibility that Cavallero himself leaves room for in the earlier citation), such equalization will not be fair. And a merely partial explanation is surely what we have here. Global inequality of opportunity is not produced simply by the bare fact that international law allows for immigration restrictions. It also has domestic causes, such as differing economic systems, population sizes and natural resource endowments.¹⁷⁷ These domestic factors created differences in

¹⁷⁵ “The immigration policies of one country may impose large effects on the lives of those living in other countries, but under the political conception that by itself does not imply that such policies should be determined in a way that gives the interests and opportunities of those others equal consideration. Immigration policies are simply enforced against the nationals of other states; the laws are not imposed in their name, nor are they asked to accept and uphold those laws. Since no acceptance is demanded of them, no justification is required that explains why they should accept such discriminatory policies, or why their interests have been given equal consideration. It is sufficient justification to claim that the policies do not violate their prepolitical human rights.” (Nagel 2005, 129-30)

¹⁷⁶ Or, at least, I am with him if we construe those opportunities or prospects in terms of resource holdings (see 1.3.3 *supra*), which Cavallero notes as one of the options (98).

¹⁷⁷ This move, as should be clear, is analogous to the one made earlier in regard to the global property regime in natural resources. It parallels the first reason that I gave for rejecting egalitarian distributive outcomes as an implication of fairness, applied to that regime (5.4.1).

the opportunities available to individuals belonging to distinct political communities before international law was ever invented. It is inappropriate, then, to hold international law to account for all of those differences.

As suggested above, we can interpret this as a disagreement over the metric of fairness under IIL. When comparing relative advantage under the latter, we should not focus on all differences in opportunities or life prospects, but only on that subset of differences that is traceable to IIL. My second disagreement with Cavallero is of a more explicitly moral nature. Although Cavallero explicitly leaves the normative basis of his argument undefended (98), the emphasis on involuntariness in his “cosmopolitan premise” suggests that he shares Carens’ view that allowing unchosen facts about a person to justify inequalities in their treatment constitutes discrimination on morally arbitrary grounds. I argued above against Carens that this alleged connection between involuntary attributes and morally arbitrary treatment ought to be severed. We should at least leave room for the possibility that there is a non-arbitrary moral justification for giving a person’s nationality weight in certain global allocations of rights or resources, even if nationality is unchosen.

A helpful way of clarifying the nature of these disagreements between Cavallero and myself is to replace Cavallero’s “cosmopolitan premise” with the following principle, which I take it that we both endorse:

Fair Immigration. The benefits and burdens created by international law on immigration ought to be distributed equally amongst participants, unless special justification can be given for unequal treatment.

The differences highlighted above are that a) Cavallero slips into construing the relevant benefits and burdens too broadly, and b) assumes that nationality cannot be a candidate for a special justification for unequal treatment in this context.

If *Fair Immigration* does not have the extensive redistributive implications that Cavallero has in mind, what distributive outcomes does it imply instead in our world? To answer this question precisely we would need to determine exactly which opportunity differences are created by IIL. It is clear that doing so will be very difficult; indeed, it might be pretty much impossible. Cavallero’s immigration-pressure equilibrium model, certainly, is not going to do the job. I suggest that it is plausible, however, that at the very least, *Fair Immigration* imposes a requirement akin to that imposed by *Fair Exclusion* in regard to the global property regime, viz. an assurance that those excluded from countries with greater opportunities at least satisfy. If this is so, fairness in immigration will provide an important additional reason for honoring the requirements of decency argued for in Chapter 4 – and hence, if the arguments of the preceding section are correct, for a significant increase in at least temporary labor migration to the developed world.

6.3.3 Domestic welfare and immigration

The foregoing discussion has produced a recommendation, on grounds of global distributive justice, for a quite extensive increase in at least temporary labor immigration to developed countries – arguably, at a minimum, a doubling of present levels (see fn 173 *supra*). If this recommendation is to be conclusive, we need to consider how considerations relating to the domestic welfare of receiving states enter into the moral equation. Domestic welfare plays too extensive a role in public debate over immigration policy in developed countries, where it is often presented as the only relevant consideration – with some exceptions made for the interests of refugees and separated family members. This is wrong. Rights to immigrate should not be construed as privileges to be metered out according to the discretion of the receiving community, in line with its collective self-interest. Instead, a state's immigration policy should be set in a way consistent with the negative and positive duties that that state is under regarding the welfare of political communities other than its own. Nonetheless, considerations of domestic welfare should play *some* significant role in the determination of immigration policy. As I argued in Chapter 2, giving some degree of special priority to the interests of oneself and one's co-citizens is not only permitted but required by utilitarianism, properly understood. The question, as always, is how to balance these two sets of considerations against each other.

I will approach this question by considering a pair of arguments attempting to justify a rejection of an increase in immigration from current levels by reference to the supposedly negative effects that such an increase would have on receiving communities. The general form of the argument is the same in each case. We are first given a claim to the effect that, for some domestic good x , an increase in immigration would damage x . And we are then given a claim to the effect that the prospect of x 's being damaged is sufficient reason to reject the increase in question. Each argument, then, is vulnerable to a denial of one, the other or both of these claims, which I will term “the empirical claim” and “the normative claim”, respectively.

For the first of these arguments, substitute x in the above schema with “economic prosperity”. The resulting argument claims that an increase in immigration from current levels would reduce economic prosperity in countries of the developed world, and that that is sufficient reason for those countries to refuse to allow it. The empirical claim is insecure here, if interpreted in a quite general fashion. The overall socio-economic effects of immigration are poorly understood. While it is plausible in many cases that increases in immigration would reduce the earnings of some specific groups within a receiving country's population, how precisely these effects would translate into changes at the aggregate level will depend on the amount of increased immigration at issue, and on the particular circumstances (economic, political and demographic) of the receiving country.¹⁷⁸ Many economists argue that developing countries in

¹⁷⁸ Consider, in this vein, the most likely immediate effect of increased immigration into the developed world: wage depression in some sectors due to increased wage competition. This is not good news for the native Californian fruit-picker who loses income due to the arrival of a fruit-

fact look to *benefit* economically from increased immigration in specific sectors over the next few decades, due to projected labor and skills shortages in health care, domestic work, hospitality and construction, caused by rising levels of age, education and training in the developed world. But, in any case, even if the empirical claim were true in a specific case, the normative claim would fail. It is not plausible that the fact *per se* that increased immigration would reduce a developed country's economic prosperity constitutes grounds to reject it. What would need to be shown for that purpose is that the reduction in question would be sufficiently large and disvaluable to outweigh the positive duties of the country in question to promote global distributive justice. I suggest that, given the extent of the economic gap that we see today between rich and poor countries, we have room for significantly more immigration to the developed world than we see at present before that latter claim can be rendered plausible. This suggests that the increase in immigration called for by global distributive justice would have to be very large before the argument under consideration could reasonably be used to reject it.

A better argument substitutes *x* with one of a set of what might be called "liberal egalitarian projects" at the domestic level. One commonly proffered such candidate is the welfare state. There are four distinct ways in which an increase in immigration from current levels might be claimed to threaten the latter. First, increased numbers of low-income immigrants might place pressure on public services, rendering their provision unmanageable and ineffective. Second, reductions in economic growth due to immigration might render budget cuts in welfare programs economically necessary. Third, cultural disparities between immigrants and native residents might reduce the sentiments of social solidarity that tend to underlie willingness to support redistributive measures.¹⁷⁹ Fourth, over time, a large increase in immigrants from non-liberal cultures might be expected to reduce the overall commitment to liberal egalitarian values in the population, a commitment on which much of the welfare state depends.

It is unclear how likely the first two of these mechanisms are to eventuate. As noted above, the effects of immigration on economic growth are mixed, and highly likely to vary by country. If current demographic projections are correct, the "support ratio" of workers to retirees in Europe and Japan may decline to the point at which immigration in fact becomes necessary in order to sustain current pension and transfer schemes (World Bank 2005, 209). Moreover, receiving communities are not powerless in the face of pressure on their social programs: services can be maintained or expanded by means of resources shifted from other parts of the public sector. I consider the third and fourth mechanisms to

picker from Mexico. But it need not necessarily be a bad thing for the society as a whole – and, consequently, even for that native fruit-picker herself over the longer term. This is because moderation of wage growth can contribute to higher profits, resulting in both more profitable investment and increased savings, each of which can accelerate growth.

¹⁷⁹ This might happen either gradually as immigrants arrive, or prior to their arrival. The expectation that a particularly generous welfare state might result in one's country being especially attractive to culturally alien immigrants might encourage cut-backs as a disincentive.

be more likely to occur. The claim that increased cultural diversity as a result of immigration might reduce social solidarity and commitment to liberal values in developed countries is not implausible. Nor is the claim that an erosion of the welfare state might ensue. A similar argument on these cultural diversity grounds is often made in regard to another central liberal egalitarian project: *viz.*, democracy, understood as a particular type of egalitarian society, rather than merely as a formal political system. If it is to be successful and sustain itself over time, democracy in this broader sense plausibly requires a shared set of commitments, values or beliefs – whether thin and political in nature (e.g. allegiance to the basic principles of the constitution) or thick and comprehensive (e.g. veneration of the national hero) – held, if not by all, then at least by a large majority of the population. Cultural diversity might be expected to undermine this shared set of commitments, and with it the values, institutions and policies required to sustain a democratic community.¹⁸⁰

The question that we are interested in here is not whether some degree of immigration would have these worrisome effects, but rather whether the increase demanded by global distributive justice in particular would have them. That would seem to depend on three factors. The first is how large the increase in question actually is: presumably the larger the increase, the higher the risk. I think that it would take a large increase in persons espousing non-liberal values before the welfare state and democracy became endangered; a somewhat lesser increase before concerns about social solidarity due purely to cultural difference became pressing. The latter, then, is the mechanism more likely to cause trouble. The second factor is the cultural and demographic character of the particular receiving state at issue. States plausibly vary in the extent to which they can increase in cultural diversity while retaining social cohesiveness. The third factor is the extent to which people's attitudes towards foreigners are malleable. One of the more promising things about xenophobia is that, in at least some cases, it decreases in the face of sustained, mutually beneficial interaction with the hated party. It is possible that governments can do something to further this outcome, by creating opportunities for cooperation between distinct cultural groups, and promoting tolerance in the general population.

Uncertainty about each of these things makes it unclear to what extent the empirical claim will go through in a particular case. What of the normative claim? This second claim has a better chance of succeeding in the case of the

¹⁸⁰ The claim that shifts in cultural dynamics as a result of immigration may be harmful to a liberal egalitarian project needs to be stated carefully, given that it sometimes tends in a direction we should not want to go. The suggestion is not that a liberal society depends on complete cultural homogeneity. This is highly implausible, given that a) many multinational and multiethnic liberal societies exist, and b) cultural homogeneity beyond a certain point is itself likely to threaten the liberal project, by virtue of being oppressive and stultifying. Nor is the suggestion that liberal egalitarianism entails a right of societies to protect their distinctive culture from the ravaging foreign hordes. This sounds more like communitarianism or perfectionism than liberalism, as well as resting on the dubious idea that we can identify any one single culture in modern states.

arguments now under consideration than in the case of the economic prosperity argument given earlier. This is because the former can be more easily given a universalistic spin, insofar as the existence and success of the projects to which they refer can be claimed to have positive value even for those who are excluded from liberal egalitarian societies. The liberal egalitarian character of a society is of significant benefit to those who live in one, and for that reason it carries some weight purely on grounds of domestic welfare promotion. But liberal egalitarian societies also hold out two more general benefits.

First, the existence of liberal states serves to promote the extension of liberalism to other parts of the world.¹⁸¹ Existing liberal states can serve as a source of inspiration for those living in other states, demonstrating “that a strongly redistributive economy is more than a fancy dream, and...thereby provid[ing] a tangible model...for redistributive strategies in each country...” (van Parijs 1992, 164). They are also able, in more ambitious guise, to provide active assistance to those working to establish liberal rights in their own states. Second, liberal states have historically been more likely than non-liberal states to promote a number of valuable causes and outcomes other than liberalism itself. Barry’s claim that the global environmental movement is one such cause was noted earlier (1992, 282). Similar things might be said of the development of the global economy, the expansion of international law, and the initiation of denuclearization programs, international peacekeeping operations, and global measures for the protection of human rights. Such achievements as have been made in these and allied areas are admittedly fragile and incomplete, but, to the extent that they have succeeded, they have led to genuine improvements in global welfare.

I am inclined to think that arguments based on “liberal egalitarian projects” currently provide the best available case for justifying restrictions on immigration into developed countries.¹⁸² But note that it would be odd to say that such arguments might be used to justify levels of immigration *below* those required by global distributive justice. For these arguments are themselves, at least in part, based on global concerns. If immigration beyond a certain point were to result in the destruction of liberal egalitarianism in the developed world, and with it one of the more promising routes to decency and domestic distributive justice worldwide, global distributive justice itself would call for a halt.

6.3.4 Conclusion

¹⁸¹ This argument assumes, of course, that such expansion would be a good thing, an argument that will be rejected by non-liberals; I will not defend it here.

¹⁸² One implication of this suggestion is that liberal societies may have a stronger moral case than non-liberal societies for rejecting increases in immigration beyond a certain level. This is plausibly another case (see fn 118 *supra*) where we face “second-level” questions of fairness: questions concerning fairness in the distribution of responsibility to promote an independently specified moral requirement. I do not have space to address this issue here, but signal it as an area where more needs to be said.

To sum up the preceding sections, the precise extent of increased immigration that a country is morally required to allow on grounds of global distributive justice, depends on at least the following factors: its capacity to absorb more people without reducing its ability to promote decency worldwide; the extent to which it is benefited or burdened by international immigration law; and the effects of immigration on its liberal egalitarian character, should it have one. These are currently great unknowns for any country. I do think, however, that as the evidence currently stands, the foregoing discussion provides a case on grounds of global distributive justice for a significant increase in at least temporary labor movement towards industrialized countries.

I want to briefly note in closing a set of concerns about post-admission policy regarding temporary labor migrants that may temper enthusiasm for this conclusion. Guest worker programs generally include restrictions on employment, including occupational mobility; restrict opportunities for family reunification; permit discrimination in wages and working conditions between temporary migrants and citizens; exclude temporary migrants from full access to public benefits; and incorporate sometimes aggressive measures aimed at monitoring guest workers and enforcing their return to their home countries on expiration of their visas. Policies of this general sort are necessary both to keep temporary migration temporary and to sustain public support for the programs. But in doing so they essentially create a legally sanctioned underclass: a group of residents who contribute to the receiving country in a variety of ways, but are denied the rights accorded to its citizens. This is worrisome for two reasons. The first is that the insecure protection of rights afforded by some post-admission policies renders migrant workers vulnerable to exploitation and abuse. Female workers in the domestic service sector, for instance, are frequently subject to excessively long workdays, poor working conditions, sexual harassment, violence, and inability to contact their families, problems worsened by their lack of familiarity with the culture and language of their receiving country (see Ehrenreich & Hochschild, 2002). If such problems are widespread, they may place a dent in the extent to which increased temporary labor migration would further global decency. The second concern is that the existence of an underclass is in tension with some of the basic principles of liberal egalitarianism, including that requiring equal protection of the laws. One might view this as of concern because it is wrong as a matter of fundamental principle for liberal egalitarians to betray their own values in this way. Or, more attractively, I think, one might claim that a willingness to discriminate in this fashion threatens to destabilize commitment to liberal egalitarian values over time. If the gains for global distributive justice of increasing temporary labor migration are as large as I am here assuming that they are, I do not consider the preceding concerns to undermine the case for an increase, at least for the moment. They do however suggest both that the merits of guest worker programs ought not to be overstated, and that any stepping up of those programs ought to be combined with efforts to “[seek] the broadest rights possible for aliens within the constraints of political feasibility” (Chang 2003).

6.3.5. Recommendations

Both sending and receiving governments need to take action if the conclusion reached above is to be implemented, and executed in a way most likely to help the global poor. Among the more important current recommendations are the following.

Sending governments should make greater efforts to spread opportunities for overseas work more evenly across their populations. At the moment guest worker programs are imperfectly targeted on the most needy, due to barriers in the form of access to information and capital for upfront expenses. This is inefficient, given that the poorest and least skilled are both those most likely to benefit from migration and those whose departure is least likely to create skill shortages in the sending country. Improved dispersal of information and subsidized loans for recruitment agency fees and travel might rectify this situation. Sending governments also have a role to play in promoting respect for migrant worker rights. Some recent suggestions include organizing pre-migration seminars on labor rights and sources of recourse in case of abuse, increasing the number of labor officers in foreign embassies, and providing language and cultural immersion classes (UNDP 2006, 104-6). There also needs to be improved regulation and monitoring of recruitment agencies, to prevent them from overcharging or cheating people seeking to migrate, and effective counseling and resettling programs for returning workers, for whom reintegration can be very difficult.

Receiving governments, for their part, should issue increased numbers of temporary working visas, and give priority in their allocation to the unskilled and needy. The best way to make progress on this front is via multilateral action, which the International Organization for Migration claims “has the greatest chance of reaping benefits for countries of origin, countries of destination, individual migrants and the communities with which they are affiliated” (2004, 6). The current state of international cooperation in this area can be described as “at a confidence-building stage” (IOM *et al.* 2004, 11). Most current international labor agreements are of a bilateral nature, and although the WTO offers a framework to address migration under Mode IV of the GATS (addressing the “temporary movement of natural persons”), existing commitments under it are weak, and progress is slow. Future developments might take the form either of progressive evolution of Mode IV, or regional migrant labor agreements for specific professions and occupations. Increased immigration could be made more palatable to developed world voters by adopting India’s proposal of a time-bound and employment-specific ‘GATS visa’, incapable of being converted to another employment visa or to permanent residency (UNDP 2006, 107), and by introducing improved (non-persecutory) measures of monitoring and enforcement to reduce overstaying. In order to minimize the risks of cultural discord canvassed earlier, increases may need to be made in a gradual fashion, and be accompanied by efforts to promote tolerant attitudes in the public. In the meantime, developed countries ought to ratify the U.N.’s *International Convention on the Protection of the Rights of All Migrant*

Workers and Members of Their Families,¹⁸³ and international financial institutions might be encouraged to reduce foreign exchange fees for remittances (Kapstein 2006, 132).

The case of immigration policy, I suggest, is one of those instances where, for immediate practical purposes, all relevant considerations of global distributive justice point in the same direction. I hope to have shown that my utilitarian account allows us to sort out which considerations are and are not relevant, and how they interact with each other. In this area, as I believe in others, my account has what I consider to be intuitive implications concerning the nature and extent of our duties towards those with whom we share the world. And its underlying framework provides what I consider to be a highly compelling set of reasons for caring about what happens to those people in the future, and for getting that future right.

¹⁸³ The Convention was passed in 1990, came into force in 2003, and currently has 37 ratifications, all of which have been deposited by developing countries. The text of the Convention can be found here: <http://www.migrantsrights.org/>

Conclusion

This dissertation can be interpreted as an attempt to perform three distinct tasks. The first task is that of giving a partial defense of utilitarianism, by showing how the latter has the resources to accommodate concerns of distributive justice in one very important arena of moral and political decision. The second task is that of providing a defense of the project of theorizing about distributive justice beyond the state, against some general doubts about the viability and interest of that project. The third task is that of constructing and defending a specific set of attractive and useful principles for evaluating the global distribution of advantages.

I believe that the conception of global distributive justice that I have developed, in the course of pursuing these three tasks, is capable of deflecting a number of criticisms to which utilitarian attempts at tackling questions of global distributive justice are likely to be prone. These criticisms derive from the following familiar objections to utilitarianism, taken as a quite general moral theory:

1. *Utilitarians are "simple-minded"* (Williams 1973, 149). Utilitarianism attempts to reduce all of morality to a single endeavor: the maximization of aggregate wellbeing. But the story is surely much more complex than this. Our moral world is constituted by a wide variety of ideas, practices, attitudes and ideals that, on the face of it, are both fundamentally distinct from each other and, in many cases, have nothing to do with the production of wellbeing, maximal or otherwise. Utilitarianism is incapable of doing justice to this diversity. It tries to force each of these phenomena into a narrow, simplistic picture of the nature and point of human relations, in the process riding roughshod over an array of delicate and morally significant distinctions.
2. *Utilitarianism is unable to provide an adequate account of the moral significance of special duties.* Most of us feel that the special relations in which we stand to particular persons (parents, friends, team-members, students) result in our having distinctive duties to those persons that we do not have towards strangers or other persons to whom we are not so closely related. Utilitarians are unable to give a proper account of these special duties, in two ways. First, they give the wrong explanation of what grounds the duties. Utilitarians must claim that so-called "special" duties are not in fact special at all, but are derived from a quite general duty, and have moral force only insofar as they contribute to the fulfillment of that duty. But this is counter-intuitive. We think that the moral force of our special relationships is basic, neither admitting of nor needing a further, deeper justification.¹⁸⁴ Second, utilitarians cannot explain why special duties are as stringent as we generally feel them to be. If the rationale for

¹⁸⁴ See, e.g. Rescher: "Obligations are obligations, and claims claims, in a basic and primary way, irrespective of the utilitarian expediency of honoring them as such" (1966, 59).

those duties were derivative in the way utilitarians suggest, they would seem to be overly vulnerable to morally sanctioned violation.

3. *Utilitarianism is inadequate as a guide to action.* The principle of utility is posed at such a high level of abstraction that it will prove impossible to derive specific guidance from it in concrete contexts of moral decision. But such guidance is part of the very point of moral theory.
4. *Utilitarianism is overly demanding.* This objection has two variants: i) the moral exertions that utilitarianism expects of us are intuitively excessive, and/or ii) we are incapable of making such exertions: moral demands must “fit the human frame” (Griffin 1986, 306) and utilitarian demands do not so fit.
5. *Utilitarianism has wildly counter-intuitive implications in many situations of moral decision.* The most striking cases are those in which the rights of individuals are at stake. There are certain things that we ought not to do to people: things that are, *ab initio*, ruled out of court. But utilitarianism would have us perform these intuitively impermissible actions in some imaginable situations.

Someone who finds these objections to utilitarianism compelling will be inclined to predict the following of any utilitarian approach to global distributive justice. Such an approach will: a) either ignore or dismiss as irrelevant values or distinctions that are crucial to a proper understanding of our global distributive duties, and make light of what are in fact genuine conflicts between distinct moral requirements; b) give an unsatisfying account of the ground and stringency of co-citizen priority, or of the significance of increased cross-border interaction for global political morality; c) leave us with no substantive guidance concerning how to criticize or restructure the current global distribution of resources; d) impose unbearably extensive demands on the global affluent, and/or e) fail to do justice to such important moral constraints as the rights of political communities to self-determination, or the claims of individuals to fair terms of international cooperation.

I agree both that a theory of global distributive justice that did all of this would not be a proper object of love, and that some clumsy applications of utilitarianism to the topic might exhibit some of these flaws. But I think that the preceding chapters have shown that the idea that a utilitarian approach to distributive justice must necessarily exhibit them is mistaken. Take, first, the charge of undue simplicity. The account that I have developed, by virtue of its indirect nature, exhibits a significant degree of internal complexity. The various forms of pluralism that it incorporates - about both the ground and content of distributive justice, and, further, about the domain and content of global distributive fairness in particular - allow room for a variety of secondary goals and values, some of which are not, in the immediate sense, to do with the production of wellbeing. The duties to which these distinct goals and values give rise may not be distinguishable at the morally fundamental level - where things are, indeed, pretty simple - but at the secondary level at which they operate, they are quite

autonomous, to the extent that conflicts between them can be expected to arise in some cases of moral decision.

Take next the charge that utilitarians cannot adequately account for special relationships. Tan's response to Goodin's account of special duties towards compatriots is typical of the first part of this charge described above, *viz.* that utilitarians give the wrong story about the ground of those duties:

Just as it would be crass to reduce the worth of the relationship of friendship to the merely instrumental one of promoting the greater good, likewise it would be a serious misdescription of the moral worth of citizenship if we think it is merely an administrative device for discharging our general duties to humanity (2004, 148).

This common criticism seems to me to be based on an attempt to squeeze too much into the domain of morality. There is a distinction to be made between the value that a relationship has for an individual, personally, and the moral value that that relationship has. I value my relationship to my sister, for instance, for reasons that have nothing to do with the extent to which that relationship conduces to the general welfare. It would indeed be crass to suggest that its value, for me, was exhausted by its tendency so to conduce. But it is not inconsistent with this claim to say that the *moral* value of my relationship with my sister is entirely derivative from general welfare considerations.¹⁸⁵ And that latter claim, I suggest, is not crass on its face. Nor, I think, is it clearly counter-intuitive. I suspect that most people out there do not even have a view about what precisely it is that grounds special duties. What they do have is the view that such duties exist, and are important, but neither of these things is something that a utilitarian will deny. The related claim that utilitarians cannot account for the stringency of special duties is likewise unconvincing. On an indirect utilitarian approach, special duties worth their salt will not be liable to constant overriding. (As Smart remarks, "one must not think of the utilitarian as the sort of person who you would not trust further than you could kick him" (Smart and Williams, 71)). And many commonly recognized special duties are worth their salt, including, I have argued, those that hold between compatriots.

Another way in which its allegedly warped account of the ground of special duties might be felt to hamper utilitarianism in its attempt to provide an adequate account of global distributive justice is the following. Many of us feel that the

¹⁸⁵ This response depends on a particular view about the way in which the "personal point of view" relates to the "moral point of view". The view that I adopt on that question is roughly that advocated in Brink 1986, as summed up in the following passage:

[T]he personal point of view is important, and we can recognize this without making morality capture its importance. The worries that the importance of the personal point of view raises can be viewed not as *moral worries* but as *worries about morality*....worries about the justification or supremacy of moral demands, not about the correctness of a utilitarian account of morality" (1986, 432-33, italics in original).

increased density of economic and political interactions across borders that we have witnessed in the postwar period has had transformative effects on the nature and extent of our global distributive duties.¹⁸⁶ But it might be thought difficult for utilitarians to accommodate this intuition, given that in their view, associative relations are not of any fundamental moral significance. Again, the account that I have provided shows this concern to be unfounded. I have argued in the preceding that the facts of globalization have very significant implications for utilitarian global distributive justice, not only because they have increased the scope for both harmful and beneficial cross-border action, but also, significantly, because they have created new fairness-apt contexts of governance.

What of the charge that utilitarianism is insufficiently action-guiding? Bertrand Russell claimed that “to teach how to live without certainty, yet without being paralyzed by hesitation, is perhaps the chief thing that philosophy...can...do” (2004, 2). The standard diagnosis of utilitarians is that they haven’t learnt to do either of these things. They cling to an all-encompassing basic principle sufficiently general to give them an answer to any and every moral question. But in order to enable them to do this, their principle has to be so breathtakingly abstract that it ends up leaving them with no idea whatsoever of what, actually, to do. O’Neill appears to find this problem compelling in regard to global distributive justice:

Although [consequentialism] appears to offer an algorithm for right action, the algorithm could only be used if we had a method for generating all the ‘options’ to be compared, adequate causal understanding for predicting the likely results of each ‘option’ and an adequate theory of value (Utilitarian or other) for evaluating each result with sufficient precision to rank the ‘options’. This procedure can perhaps be approximately followed for some quite limited problems. It is a non-starter for dealing with transnational justice. Here neither ‘problems’ nor ‘options’ for solving them can be uncontentiously listed, and the results of most ‘options’ are uncertain and of disputed value (2000, 123)

O’Neill notes that utilitarians are not the only theorists in danger here: if they go down, they’re taking cosmopolitan Rawlsians, at least, with them (134).¹⁸⁷ But

¹⁸⁶ Thus, Julius writes of the “appearance that global justice has become more important as the world has become more connected”, and states that he “[wants] a view for which the salience of global justice is increasing in the density of interactions across borders” (2006). Similarly, Cohen and Sabel write: “[t]he global space outside the state—the space of global politics—is incomparably richer in interdependence, cooperation, rule-making, regimes, institutions, debate, social movements, and political contest than in Hobbes’ day – and this is relevant to questions of global justice” (2005).

¹⁸⁷ Rawls acknowledges the imprecision of the difference principle in the case of domestic distributive justice in the following passage:

The question whether legislation is just or unjust, especially in connection with economic and social policies, is commonly subject to reasonable differences of opinion. In these cases judgment frequently depends upon speculative political and economic doctrines and upon social theory generally. Often the best we can say of a law or policy is that it is

are they going down? I think not. O'Neill is right to claim that an attempt to apply the principle of utility (or some comparably general and information-hungry principle) directly when faced with a global distributive problem is bound to fail. But this is precisely why utilitarians should recommend no such thing. Instead, as I have argued, they need to formulate a set of secondary principles better suited to the strategic constraints (epistemic and other) that structure everyday moral decision-making. These secondary principles, I hope to have shown, can be quite specific enough to provide concrete guidance where decisions between different global or international distributive schemes are concerned. As I have acknowledged throughout, one can of course argue about whether or not the secondary principles that an indirect utilitarian ends up with are appropriately sanctioned by the principle of utility, or about whether or not we can have any idea whether or not they are. Perhaps those that I have arrived at are criticizable on these fronts. But this is the ground on which utilitarian accounts of distributive justice need to be challenged, not the higher ground focused on by O'Neill.

The final two charges listed earlier assume, against the previous one, that we can work out what utilitarianism has to say regarding our global distributive duties. Their problem is not with its silence, but rather with what it says. Utilitarianism is, first, much too demanding of the global affluent.¹⁸⁸ And it is, second, insouciant about important moral constraints, such as those imposed by fairness or the value of collective self-determination. Again, I think my approach shows both of these concerns to be unfounded. The conception of global distributive justice advocated here does not look set to be overly demanding – or, at least, not any more so than most of its competitors. And nor does it trample all over common moral intuitions about fairness and political autonomy, as Chapters 4 and 5 show. It does admittedly do some trampling in some other areas: but only, in my view, where trampling is quite clearly in order.

Beyond the absence of these vices, I think that my approach exhibits a number of more positive virtues, which give it a lead in some respects over both its (few) welfare consequentialist competitors and those at a greater theoretical distance. Its chief advantages over the former are its greater ambition and completeness. The approach that I have argued for is more ambitious than existing welfare consequentialist accounts of global distributive justice in not confining its attentions to the needs of those in dire straits, but also developing a case for additional and more extensive obligations. It is also more complete in range,

at least not clearly unjust. The application of the difference principle in a precise way normally requires more information than we can expect to have... (1971, 174)

¹⁸⁸ Perry implies this view in the following passage (*italics mine*):

...[A]ny liberal, *nonutilitarian* theory of justice must acknowledge the value of autonomy by granting to individuals a certain measure of moral space in which to live their own lives and pursue their own interests. There is thus an upper limit on the self-sacrifice that liberal states can demand of their citizens. (Schwarz, 105)

insofar as it takes up the question of how requirements of global distributive justice might apply not only to states, but also to international contexts of governance. The chief general advantages that my account possesses over non-welfare consequentialist theories of global distributive justice, on the other hand, are three. First, my account incorporates an attractive story about why there morally ought to be separate political communities, rather than, like many of its competitors, merely taking their existence as a moral given. Second, it has an in-built flexibility lacking in many of its opponents. Due to their understanding of principles of justice as founded on essentially strategic considerations, utilitarians are able to justify changes in their principles over time in order to meet changes in global circumstances, with an ease unavailable to many non-consequentialists. The third general advantage of a utilitarian approach is the way in which it places decency at the heart rather than at the periphery of (or beyond) global distributive justice. Distributive justice does not end with reducing global poverty, but if it does not begin there, something has gone seriously awry.

Sidgwick writes, in regard to domestic affairs: “[t]he attempt to map out the region of Justice reveals to us a sort of margin or dim borderland, tenanted by expectations which are not quite claims and with regard to which we do not feel sure whether Justice does or does not require us to satisfy them” (1907, 270). When we introduce *actual* borderlands, and activities across them, into the equation, the view gets, if anything, dimmer. It seems safe to say that none of the present candidates for a theory of global distributive justice yet has a claim to having mapped out this region perfectly. The main thesis that I hope to have advanced in this dissertation is the modest one that utilitarianism deserves to be taken seriously as one of those candidates. Whether or not something stronger than this can ultimately be said will depend on a number of things. One is whether or not utilitarians can adequately answer the formidable arsenal of criticisms that their basic approach to morality has generated over the past few centuries. Another is whether or not the account advanced here continues to look viable when applied more broadly, to issues of global justice that I have not addressed. Another is whether or not one of the many other available theories of global distributive justice proves ultimately to be more compelling. All of these things give utilitarian theorists of global distributive justice plenty left to think and argue about. As things stand, I feel positive about the theory - and at least hopeful about the world.

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